

KABR500018052024



IN THE COURT OF THE II ADDL. CIVIL JUDGE & J.M.F.C.,
AT :HOSAKOTE

PRESENT

SMT. CHAITRA V. KULKARNI,
B.A.,LL.B., LL.M.
II ADDL. CIVIL JUDGE & J.M.F.C.,HOSAKOTE

Original Suit No.117/2024

Dated this the 30th Day of September 2024

PLAINTIFFS: Sri. Thippaiah

-V/s-

DEFENDANTS: Smt. Anjinappa & others

IA NO.I

APPLICANT / ORI. PLAINTIFF :

Sri. Thippaiah

(By Sri.Y.V.R.,Advocate)

-V/s-

OPPONENTS / ORI. DEFENDANTS :

Smt. Anjinappa & others

(Defts. By Sri.A.S., Advocate)

**ORDER ON APPLICATION UNDER ORDER XXXIX RULE
1 AND 2 R/W Sec.151 OF CPC**

The present application has filed by the plaintiff by seeking temporary injunction to restrain the defendants, their men, children, relatives, legal representatives, agents, officials, staff, servants, workers, GPA holders or anybody acting under them from obstructing the use of B schedule property by the plaintiff.

2. In the annexed affidavit the plaintiff has stated that, he is the absolute owner of the Suit Schedule 'A' Property. originally the land bearing Sy.No.17/1, measuring 4 Acres situated at Byrahalli Village belonged to his joint family. The said land stood in the name of one Chowdappa, who is none other than the elder brother of his father namely Venkataramnappa @ Moogappa. The said Chowdappa got the land measuring 10 Guntas converted from agricultural

to non agricultural residential purpose vide conversion order bearing No.ALN.SR.86/89-90, dated 14-3-1990. Further stated that, thereafter his father and his above said uncle namely Chowdappa entered into a oral partition and in terms of the said oral partition, the above said converted land measuring 10 Guntas was allotted to the share of his father and accordingly his name was mutated in the revenue records vide M.R.No.1/94-95. Further he has constructed a Mangalore tiles roofed house and residing therein along with his family. He has also dug a borewell and he has grown coconut trees and he has also constructed a shed. In the meantime, he had filed a suit for partition against his uncle Chowdappa, one Anjinappa (defendant No.1 herein) and Smt. Muniyamma (mother of the defendant No.1 herein) in O.S.No.737/1996 on the file of the II Addl Civil Judge (SR.DN), Bangalore District at Bangalore and the said suit came to be compromised and in terms of the said compromise the suit schedule 'A' property herein was allotted to his share and accordingly a

final decree has drawn on 19-4-1997. Further there is a 10 Feet road on the Western side of the suit schedule 'A' property. The said road runs from Medimallasandra to Byrahalli village. The said road earlier was a mud road and now the Anugondanahalli Village panchayath have formed a concrete road, which is schedule B property. The said road is being used by him and even the villagers of the said Hosamanegalu Village. The said road is the only road available for him to reach his property. The existence of the said 10 feet road is clearly mentioned in the survey records and conversion documents and in the Katha and license issued by the panchayath. Further contended that he has installed stone slabs at the East, North and Southern side of the schedule 'A' property. However, as there is a road (entry to the suit schedule 'A' property) on the Western side, he has not installed stone slabs on the Western side. Further contended when such being the case, the defendants herein who do not have any manner of right, title or interest over the schedule

property, the defendants with a malafide intention to harass the plaintiff, they are trying to interfere with the peaceful possession of the plaintiff over the suit 'A' schedule property and tried to fence the same with barbed wire and hence he had filed a suit for permanent injunction against the defendants herein before this Court in O.S.No.198/2023. This Court was pleased to grant an interim order of injunction. However after hearing both the parties, this Court has vacated the said interim order and now taking undue advantage of the same, the defendants all of sudden on 23-2-2024 tried to block the schedule B property and they are not allowing him to use the B schedule property road. When he questioned the defendants about their illegal interference, the defendants have given evasive reply. He resisted the illegal acts of the defendants. He approached the jurisdictional police to lodge a complaint against the defendants. The said police have not taken any action and have further advised him to approach the civil court as the matter pertains to civil in

nature. Further contended that except the said B schedule road there is no any other way to reach the schedule A property. The schedule B road is the only access for ingress and egress to the schedule A property. He has been using the schedule B road to transport the materials through cart, tractor and lorry and the said road is in existence since time immemorial. Further contended that the because of the aforesaid obstruction he has been prevented from using of the said road and himself and other members of his family have been put to difficulties. Hence he sought to allow present application.

3. On the other hand, the defendants have filed written statement and also filed memo by adopting the contents of the written statement as objections to the present application and in written statement they have denied the entire averments of plaint and affidavit, further contended that, pursuant to a compromise culminating in the decree in O.S. No.737/1996, an extent of 10 guntas in the lands of

Sy.No.17/1 as a term of compromise was provided to the Plaintiff, from out of a total extent of 4 Acres of Byrahalli Bechar Village of Hoskote Taluk. The extent of the said 10 guntas provided to the Plaintiff in terms of final decree and the schedule property to the suit are different properties therefore the suit of the plaintiff is not maintainable. The extent of the land in Survey No.17/1 is measures 4 Acres. The Plaintiff subsequent to the final decree and immediately prior to the institution of the present suit has secured a bifurcation of the extent allotted to the plaintiff without the knowledge of the defendants where the extent allotted to the plaintiff is assigned under Sy. No.17/1B. The property allotted and occupied to the plaintiff in Sy.No.17 was abutting the Western boundary of Sy.No.17. The plaintiff was required to leave a portion of his lands to secure an access. The portion to be surrendered was to be fromed out of the extent of 10 guntas. The plaintiff however has secured a sketch with a malafide intention of attempting to retain the extent of 10 guntas irrespective of the formation

of the road in his portion. The schedule property to the suit which reflects the existence of a road on the Western side is a road forming part of 10 guntas and is not beyond the extent of 10 guntas. Consequently, the entire intention of the Plaintiff is to encroach the property of the defendants. Further contended that, The plaintiff was never in possession of any extent in excess to 10 guntas and on account of the formation of the road in the portion of 10 guntas the extent of land owned by the Plaintiff in Sy. No. 17 is lesser than 10 guntas and reduced by 2 guntas. The schedule property to the suit reflecting Road as the Western boundary of 10 guntas is incorrect and the Western boundary is the village boundary of Byrahalli Bechar Village and the Western boundary would be Yadagondanahalli Village in Sy.No.60. Further contended that previously the plaintiff had filed one more suit against these defendants bearing O.S.No.198/2023 on the file of the Principal Civil Judge and JMFC at Hoskote, for the of permanent injunction and other reliefs in respect of same

Suit Schedule Property and for the reliefs of declaration, the said suit is pending for adjudication. Further contended that in the said pending suit, the plaintiff had filed an application (I.A No.1) seeking relief of temporary injunction restraining the defendants or anybody claiming under them from putting up of barbed wire fencing or any other type of compound on the western side of the suit schedule property, the said application came to be rejected by the Hon'ble Prl. Civil Judge, on 25.09.2023. Thereafter the said plaintiff herein filed Misc. Appeal No.32/2023 before the Senior Civil Judge and JMFC, at Hoskote and the said Misc. Appeal also dismissed on 18.4.2024. Thereafter, he suppressed all the material facts and filed false suit by making false allegations against them for no fault. Further, prior to formation of the concrete road portion over their property as the said concerned village panchayath authority has assured to these defendants to pay the compensation about the acquisition of the property belongs to them for the purpose of formation of concrete road, but till today the

concerned panchayath authority has not paid any single paise. In that regard several requisitions made by them to the concerned PDO, Anugondanahalil gram panchayath authority and other concerned authorities giving representation in writing and the said process is still pending, but there is no fruitful result and now the plaintiff misusing the same and by suppressing the material facts, and also to grab the valuable property of them, the plaintiff has come up with this false and frivolous suit only to knock off their valuable property by creating false set of facts and created the false boundaries and filed this false suit, further plaintiff has every right to seek any reliefs only in pending suit bearing O.S.No.198/2023 and also plaintiff has filed both the suits for same reliefs and parties and property also same. Hence on these grounds sought to reject the application.

4. Heard both sides. Perused the materials placed on record.

5. The following points arise for my consideration :

POINTS

- 1) Whether the plaintiff has made out a prima-facie case in his favour?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff would suffer loss and hardship if the application is rejected?
- 4) What order?

6. My findings on the above points are as under :

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. **Point No.1 to 3:** Admittedly the plaintiff has filed present suit for declaration of easementary rights and filed the present application to restrain defendants

from obstructing the use of B schedule property i.e., road. It is case of the plaintiff that he has been using the B schedule property as a road to reach his A schedule property and the defendants are obstructing to use the same. Per-contra it is the contention of defendants that the plaintiff without knowledge of defendants got bifurcated the extent of the property allotted to plaintiff and has to leave the portion of his land to secure access to reach his land and road has to be formed out of the extent of 10 guntas which has allotted to him. Further the B schedule property is formed in the said 10 guntas. The documents produced by the plaintiff prima-facie show that at Western side of his property there is road and photographs and map, even though which cannot be considered at this stage without formal proof, but the said documents ex-facie show that there is a road. The pleadings of the defendants in the written statement show that they have not denied the existence of road but they contended that prior to formation of concrete road which

is B schedule property, the authority concerned had assured them about compensation for acquisition of the same for formation of road in the property of the defendants, which clearly shows that there is a road as shown by the plaintiff as B schedule property and only because the defendants have not been given compensation, it cannot be said that the plaintiff has no access to B schedule property, if at all the defendants have any grievance as to compensation for acquisition, they have to approach competent authority and as the documents prima-facie reveal that, already the road has been formed, over which the plaintiff is claiming their right to use the same, under such circumstances when the defendants have not shown that they have objected while formation of road and as already there exists road, the plaintiff has prima-facie established his case to go for trial and if at all the defendants will not be restrained, then the hardship will be caused to plaintiff and balance of convenience also leans in favour of plaintiff. Hence,

with above observation, I answer Points No.1 to 3 in the “Affirmative”.

8. **Point No.4**:- In view of the discussion made on Points No.1 to 3, I proceed to pass the following....

ORDER

The I.A.No.I filed by the plaintiff U/O. XXXIX Rules-1 and 2 R/w. Sec.151 of the C.P.C. is hereby “Allowed”.

The defendants their henchmen, servants, anybody claiming under them are hereby restrained from obstructing the use of suit schedule B property by the plaintiff till further order.

Considering the peculiar circumstances of the case, there will be no order as to costs.

(Dictated to the stenographer directly on computer, typed by her, revised by me and then pronounced in the open court, on this 30th day of September 2024)

(Smt. Chaitra V. Kulkarni)
II Addl. Civil Judge & J.M.F.C.,
Hosakote