

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

**Present; Sri Basavaraj. G. Sanadi,  
B.A L.L.B(Spl.),  
Prl. Civil judge And JMFC Hosakote**

**O.S. NO: 356-2022**

**Dated this 22<sup>nd</sup> Day of February 2023**

**Applicant/  
Plaintiff**

- : 1. Smt. Rathnamma  
W/o Venkateshappa  
Age : 60 years,  
R/at Yeshwantapura Village,  
Nandagudi Hobli,  
Hosakote Taluk,  
Bengaluru Rural District and others.

(By Sri. K.M., Advocate)

-V/s -

**Respondent/s  
Defendant/s**

1. Sri. Chowdappa  
S/o Chikkanna,  
Age: 57 years,  
R/at Yeshwantapura Village,  
Nandagudi Hobli,  
Hosakote Taluk,  
Bengaluru Rural District and others.

(By D1 to 6- Sri. B.L.K., Advocate)

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**ORDER ON IA NO. I FILED UNDER ORDER 39**  
**RULE 1 AND 2 Of CIVIL PROCEDURE CODE**

The applicants/plaintiffs have filed this application with prayer to grant the relief of temporary injunction against the defendants, restraining the defendants or anybody claiming under them, from interfering and disturbing the peaceful possession and enjoyment of plaintiffs over the suit schedule properties. In support of the application plaintiff No.4 has filed the affidavit and prayed to allow the application.

2. On the other hand defendants have appeared through counsel and filed written statement and prayed to treat it as objection to IA No.1. In the written statement defendants admitted that suit properties are belonged to plaintiffs but is their contention that there exist a Grama Thana property and a road between A schedule and B schedule properties. Further contended that through the said road people of the Yashwanthpura Village will reach the grave yard and they carry dead body of villagers, by that way itself for cremation. Except the said road there is no any other road to reach the grave yard and the said road is used by the villagers since 100 years and more. Further it is the contention of the defendants that plaintiffs are

trying to encroach the Grama Thana property and thereby trying to close the road over which they have no any right. Further contended that plaintiffs have not approached the court with clean hands. Hence, prayed to dismiss the application

3. The following points arise for my consideration;

1. Whether the applicants/plaintiffs have Prima - facie case in their favour?

2. Whether the balance of convenience lies in favour of applicants/plaintiffs ?

3. Whether the applicants/plaintiffs would suffer irreparable loss if the prayer for Interim injunction is rejected?

4. What order?

4. I have heard both side's argument and I have perused the documents on record.

5. My findings on the above said points are as follow;

Point No.1 : In “ Negative”  
Point No. 2 : In “ Negative”  
PointNo. 3 : In “Negative”  
Point No. 4 : As per final order for the  
following reasons;

**: REASONS :**

6. **Point No. 1:** This is the suit filed by the plaintiffs against the defendants for the relief of Permanent injunction in respect of suit schedule property. It is the specific contention of plaintiffs that they are the joint owners and are in possession and enjoyment of property bearing House No.3/3 and  $\frac{3}{4}$ , both measuring East to west 50 feet and North to south 40 feet situated at Yeshwantapura village of Hosakote Taluk. Suit schedule-A property is the ancestral joint family property of plaintiffs and plaintiffs are in joint possession and enjoyment of schedule -A property for more than 60 years. The suit scheduler-B property is the joint family property belonging to the family of plaintiffs no.1 to 4 and in an internal family partition which took place on 13.01.2019, different extents of land in sy.No.4/11 was allotted to plaintiffs No.1 to 4. Subsequent to aforesaid partition, the plaintiffs no.1 to 4 are in separate possession and enjoyment of their respective shares. The plaintiff no.3 and 4 in their

portion of B- schedule property constructed silk worm rearing house and residential house and are using the remaining extant for tethering cattle, sheep and other agricultural purposes. Further plaintiffs no.1 and 2 are in possession and enjoyment of remaining extent of land to an extent of 4 ½ guntas each.

6(a). It is further contended that the defendants who are the residents of the Yashwantapura village, have no manner of right, title or possession in any manner. But in order to disturb the peace in the village, by using their political power and support of several organizations and associations, and making illegal attempts to interfere and disturb the possession of the plaintiffs over the suit schedule property by alleging that they have right of path-way to reach their lands through suit schedule properties. The schedule –B land is revenue land which is in possession and enjoyment of plaintiffs no.1 to 4 for more than several decades and there is no such indication of road or kharab. The schedule –A property is situated within Gramatana over which except plaintiffs no other person have any manner of right, title or interest. On 04.10.2022 at about 12.00 P.m. to 1.00 P.M the defendants along with several persons including the members of various associations and organizations, came to the suit

schedule properties and made attempts to form pathway in the suit schedule properties alleging that the said pathway is required to reach their lands. At that stage, the plaintiffs along with their family members and villagers resisted the illegal attempts of defendants. Hence plaintiffs approached concerned police station but they did not take any action. Hence, plaintiffs are constrained to file this suit along with I.A No I.

7. In support of the application, plaintiff No.4 has filed affidavit and reiterated averments of the plaint. In support of their case plaintiffs have produced the Certified copy of partition deed dated 13.01.2019, copies of RTC's, copy of the House/land tax assessment list, copies of Rough sketch and village map and other related documents. On the other hand defendants have produced the certified copies of applications issued to Tahasildar, certified copy of application issued to Panchayath development officer, copy of RTC, copy of sketch, copies of photos and CD and other related documents.

8. Learned advocate for the plaintiffs has vehemently argued that, plaintiffs are absolute owners and in possession of the suit property, defendants

having no rights are trying to interfere in the possession of plaintiffs over suit property. Further argued that plaintiffs have prima-facie case in their favour. If IA is not allowed then the plaintiffs will be put into great loss and hardship and the irreparable loss will be caused to the plaintiffs, which will not be compensated in terms of money. Therefore prayed to grant the temporary injunction against the defendants by allowing the I.A. No.1 .

9. On the other hand learned advocate for the defendants has vehemently argued that there exist a Grama Thana property and a road between A schedule and B schedule properties. Further contended that through the said road people of the Yashwanthpura Village will reach the grave yard and they carry dead body of villagers, by that way itself for cremation. Except the said road there is no any other road to reach the grave yard and the said road is used by the villagers since 100 years and more. Further argued that plaintiffs have suppressed the material facts before the court and have not approached the court with clean hands. Further argued that plaintiffs have no prima-facie case and balance of convenience in their favour. Therefore prayed to dismiss the I.A. No.1.

10. I have carefully gone through the materials

placed by both side. On perusal of materials placed by the both parties on record it is apparent that though defendants have agreed the title of the plaintiff over the suit properties, it is the contention of the defendants that there is a road belongs to Gramthana between A schedule property and B schedule property and it is only road to reach the graveyard where bodies of dead persons of Yashawanthpura village will be cremated. Further it is the contention of the plaintiffs that plaintiffs have acquired suit schedule B property by virtue of partition. On perusal of copy of partition deed produced by plaintiffs it appears that in the said partition, plaintiff no.1 has been allotted with A schedule in the partition in the partition deed which is shown as B schedule in the plaint. On perusal of boundaries of the said properties, mentioned in the partition deed it appears that there is Grama Tana property towards southern side. But in the plaint plaintiffs have mentioned towards southern side of B schedule property there is property belongs to plaintiffs that is A schedule property. Therefore it appears that plaintiffs have not mentioned proper boundaries of B schedule property. Learned advocate for plaintiffs has also argued that there is graveyard adjoining to the suit property, but he submitted that there is an alternative road to reach it. But it is the contention of

the defendants that except the said road there is no any other way to reach the said grave yard and there is Grama Tana property between the both suit properties and now plaintiffs are trying to encroach the said Grama Thana property. After having heard both side and on going through the materials on record it is apparent that existence of graveyard near to the suit properties, where the dead bodies of Yashwanthpura Village are cremated is not in dispute. Further it is pertinent to note that cremation of a person who has died is to be performed with the dignity and honour and there should not be any hinderance for that. If a dead body is not taken to the graveyard because of some obstructions on the way to graveyard then it is a disrespect to the mourning ceremony of deceased person and that should not be happened. The life of man when it ends by the reason called as death should be concluded with dignity and hounor which is his natural right. Therefore considering the facts and circumstances of the case and gravity of the facts of the case it is my considered opinion that if the restraint order is granted against the defendants it would cause hardship to the defendants and public at large in the Yashwanthapura Village.

10(a). Further whether there is an alternative way to

reach the graveyard or not is matter of trial and considering the time which may take to conclude the trial of the case it would be proper decline to grant any restraint order against the defendants. This being suit for bare injunction plaintiffs have to necessarily prove the possession over the suit property irrespective of title and interference by the defendants. Obviously it needs full fledged trial, where both parties can prove their contention by leading cogent and reliable evidence. Therefore, at this stage looking into facts and circumstance of the case and analyzing the materials placed before the court, it appears that plaintiffs have no prima-facie case in their favour. Accordingly I answer Point No. 1 in the negative.

**11. Point No 2:** As discussed above in point No. 1 now at this stage the prima- facie case is not existing in favour of the plaintiffs. Further on perusal of materials placed by both side it appears that the balance of convenience is also not in favour of plaintiffs. Hence, I answer point No. 2 in Negative.

**12. Point No 3:** As discussed above in Point No.1 and 2 the prima-facie case and balance of convenience are not in favour of the plaintiffs. Therefore, the question of hardship or irreparable loss to the plaintiffs does not arise. Hence, I answer point No. 3 in the Negative.

**13. Point No 4:** In view of my findings on Point No. 1 to 3 as discussed above, I proceed to pass the following:

**ORDER**

I.A. No. I filed U/o 39 Rule 1 and 2 of CPC by plaintiffs is hereby dismissed.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, revised by me and then pronounced in the open court, on this 22<sup>nd</sup> day of February 2023)

Prl. Civil Judge and JMFC.,  
Hosakote.

**22.02.2023**

**Case called out  
(Orders on I.A.No.1 pronounced in the  
open court vide separate order)**

**ORDER**

I.A. No. 1 filed U/o 39 Rule 1 and 2  
of CPC by plaintiffs is hereby  
Dismissed.

No order as to cost.

Call on for framing of issues by  
11.04.2023 .

**Prl. Civil Judge and JMFC.,  
Hosakote.**