



**IN THE COURT OF II ADDL. CIVIL JUDGE & JMFC,  
KADUR.**

**Present:** Sri. Ram Prashanth M.N, B.A.L,LL.B.,  
II Addl. Civil Judge & JMFC, Kadur.

**Dated:** This the 17<sup>th</sup> day of June 2023

**OS.NO.411/2023**

Parameshwarappa and another  
Vs

**Plaintiffs**

Chandrappa and others

**Defendants**

**I.A.No.I**

Parameshwarappa and another  
Vs

**Applicants**

Chandrappa and others

**Opponents**

**:: ORDERS ON IA.NO.I UNDER RULE 1 & 2 OF ORDER  
39 R/W 151 OF CPC ::**

IA.No.1 is filed under Order 39 Rule 1 & 2 of CPC, praying to remove the digged the trench in the center of the road and erected stone pillars with barbed wire in corner of western side of schedule property and not to dig further trench to close the application property

**2.** In the affidavit sworn, the plaintiff No.2/applicant No.2 has stated that, suit schedule is the road left for the ingress and egress to reach the properties of the plaintiff and the surrounding owners, hence the defendant, who was the owner of the suit schedule has entered into consent deed on 03.10.2019 through registered document infavour of plaintiff. However, now



has tried to obstruct usage of the said road, hence the present suit and the present application is filed.

**3.** The defendant has denied the plaintiff's averments and also the averments made in the application. Also has denied the contents in column No.11 of the RTC stating that the same is entered falsely. However, has admitted the agreement, but stated that the terms of the agreement is not complied. Hence, along with other grounds prayed to dismiss the application.

**4.** Heard arguments.

**5.** The points that would arise for my consideration are:-

(1) Whether the plaintiff is entitled for the relief of temporary injunction as sought for?

(2) What order?

**6.** My findings on the above points are as follows:

Point No.1 : In the Affirmative.

Point No.2 : As per final orders  
for the following:-

### **REASONS**

**7. Point No.1:** The plaintiff has filed the above suit for the relief of injunction against the defendant and also maintained the present application to restrain from blocking the suit schedule public road. The defendant has



denied the contention of the plaintiff, but he states that he has accepted to give road subject to handing over four sites, since the sites are not given, hence the plaintiff is not entitled to seek injunction.

**8.** It is 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.

**9.** Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the Injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

**10.** If on weighing competing possibilities or probabilities of likelihood of injury and if the court



considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. Hence keeping the same in mind, I proceed to discuss the materials on record in the below paragraphs.

**11. The Hon'ble Supreme Court of India in "Hindustan Petroleum Corporation Limited Vs Sriman Narayan And Anr. AIR 2002 SC 2598"** has held that object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty was resolved in his favour at the end of the trial. It is also held that balance of convenience should also be determined. While exercising the discretion, the Court normally applies the following tests :

- (a) Prima facie case in favour of the plaintiff.
- (b) Balance of convenience lies in favour of the plaintiff.
- (c) Irreparable or injury shall be suffered by the plaintiff, if the application is not allowed.

**12.** The applicant has stated that the defendant is the owner of Sy.No.56/3 and 8 guntas is left to reach Sy.No.56/4 and 56/5. The said aspect is not disputed, however, the defendant, who has admitted the execution of



the agreement dated 03.10.2019 has stated that the plaintiff has not handed over four sites as per the agreement.

**13.** The plaintiff counsel has furnished sale deeds, which has been executed infavour of the defendant, where the said defendant has sold the said properties to various purchasers. As per the plaintiff counsel, those sites are given in lieu of road given to plaintiff and others to access. However, the counsel for the defendant submits that the said sites are purchased by the defendant from plaintiff for valuable consideration.

**14.** The counsel for the plaintiff also stated that certainly, the cheque numbers mentioned regarding the payment of consideration, but the said cheque are not presented and those are not intended to be presented because the said properties were given in lieu of road. The counsel for plaintiff also stated that if really the cheque are en-cashed then certainly, there will be statement by the defendant to show that he has paid consideration.

**15.** It is vehement contention of the plaintiff that, the plaintiff has given sites No.42, 41, 24, 23, 22, where the sale deeds of it is furnished. Further the defendant has sold the site No.23, 41, 42, 24 to prospective purchasers. The defendant has not furnished any document to show that the amount has been credited to the account of the plaintiff towards the said sites. The defendant has not



stated as to why the amount is not credited to the account of the plaintiff.

**16.** Moreover, the entering into agreement over the road as per the agreement dated 03.10.2019 is not in dispute. It is to be noted that the sale deeds executed by the plaintiff is also of the same date i.e., 03.10.2019, that shows that the defendant by relinquishing his right over the suit schedule road has got the sale deeds executed in his name. More interesting aspect is that there is no condition mentioned to give sites in lieu of road by the defendant in the agreement dated 03.10.2019.

**17.** The defendant has clearly admitted that he has relinquished 8 guntas i.e., the 'B' schedule for the public road infavour of the plaintiff. There is no condition mentioned in the agreement, much-less the alleged sites to be given in lieu of road. The defendant has stated false averments of non compliance of the agreement in his written statement at para No.4 regarding 4 sites. However, the agreement is not subject to any conditions.

**18.** Since the agreement is unconditional and as per the agreement, the defendant has given the road in his 8 guntas at Sy.No.56/3 and the same is entered in coloumn No.11 of the RTC. The defendant has not produced any other document to show that the 4 sites are not given. There is no whisper by the defendant regarding



the sale deeds produced by the plaintiff, nor any word stated about payment is done to the said sale deeds.

**19.** The said road is certainly necessary for the ingress and egress to the plaintiff's property and others. The plaintiff by producing the consent agreement has made out prima-facie case, where she has right to reach the property and whereas the defendant has the bounden duty to not to obstruct the road. The defendant as of now doesn't have any right over the suit schedule road and he can't obstruct the usage of the road by the plaintiff and other general public. If the defendant has any right, he has to approach appropriate forum.

**20.** The applicant has made out a prima-facie case, as of now the plaintiff has produced acceptable documents, which goes to show that she has a better case. If the defendant interferes, certainly, the plaintiff and the general public will be put to untold hardship. The balance of convenience lies in favour of the plaintiff. There is no condition in th agreement nor the defendant has tried to enforce the said alleged conditions in the appropriate forum. As of now the defendant is a stranger to the suit schedule road. Hence, with these observations, I answer point No.1 in the Affirmative.

**21. Point No.2:-** In view of my findings on point No.1, I proceed to pass the following:



## **ORDER**

I.A.No.I filed by the plaintiffs under Order 39 Rule 1 & 2 R/w Sec.151 of CPC is allowed.

Further, the defendant is restrained from putting up any obstructions or closing the road or putting up any fence or waste materials in order to block the suit schedule road till disposal of the suit.

The defendant shall not obstruct the usage of the suit schedule road by the general public.

(Dictated to the Stenographer, typed by her to computer, revised, corrected and then pronounced in the open Court, this the 17<sup>th</sup> day of June 2023)

**Sd/-**  
**(Ram Prashanth M.N.)**  
**II Add.Civil Judge & JMFC,**  
**Kadur.**