



**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 22nd day of June 2023

OS.NO.411/2022

Parameshwarappa & Another	Plaintiffs
Vs	
Chandrappa & others	Defendants
I.A.No.II	
Anjanappa	Applicant
Vs	
Chandrappa & Others	Defendants

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

IA.No.2 is filed under Order 39 Rule 1 & 2 of CPC, praying to remove the digged 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 applicant No.2 has stated that, they are the owners of the 'A' schedule property and 'B' schedule is a road, which is left by plaintiff and defendant No.1 family and also by defendant No.8. The said road are used to reach their respective properties. The defendant No.8 has left road by receiving same measurement of land, but now the defendants are blocking



the road by putting barbed wires and digging trench. Hence the suit is filed and the present application is maintained.

3. The defendants have denied the plaint averments and also the averments made in the application. The defendant No.1 stated that there is no road as stated in the 'B' schedule, but there is another road from the northern side, which is used by plaintiff. And further there is 8 feet width of cart track in the eastern side of Koteshappa's land. The same version is stated by the defendant No.8. 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 'B' schedule road. The defendant has denied the contention of the plaintiff, but states that the plaintiff is having alternative road, 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 ownership of the plaintiffs over 'A' schedule property is not in dispute. The parties having property according the sketch produced is also not in dispute. The plaintiffs state that there is 'B' schedule road existing, where the same has been carved out in the property of the



plaintiffs and defendants. The defendant No.8, to leave road on the southern side of her property has taken same measurement of property on the eastern side of plaintiff and defendants No.1 to 7 property.

13. The plaintiffs and defendants No.1 to 7 are relatives is not in dispute. The defendants vehemently state that there is no road, which is shown as 'B' schedule left on the southern side of the defendant No.8's property and eastern side of the plaintiffs and defendants No.1 to 7 property. The defendants have also stated that there is alternative road for the plaintiffs to reach their property and the same is used by them till today.

14. The contention of the plaintiffs that there exists 'B' schedule and contention of the defendants that there is no 'B' schedule, needs to be known, only after the full fledged trial. However, at this stage now the court needs to see through the available documents and submissions, whether, there is any road as stated in the 'B' schedule for the ingress and egress to plaintiffs to reach their 'A' schedule property.

15. The plaintiff has furnished photographs, where it shows that there is road to reach the 'A' schedule property. Also as per the sketch from Antharaghatte – Chowlahiriyur main road, there is a road which passes to the northern side. In the said road, another road is shown, which passes on the southern side of the property of the defendant No.8 and also the said road again passes to the



property of the plaintiffs, where the said road is on the eastern of the property of plaintiffs and defendant No.1 to 7, also on the eastern side the property of the defendant No.8 is situated.

16. As per the sketch, the defendant No.8 is having property on the south-western side and to the extreme of it, the road as stated in the 'B' schedule is mentioned. This court has also appointed court commissioner upon the consent of both counsels on 09.12.2022. As per the order dated 09.12.2022 the defendants admit the existence of the property and the road as per the sketch. As per the plaintiffs, the trench is dug and barbed wires is installed. Even the counsel for the defendant has submitted that the trench is closed and barbed wires are removed on 09.12.2022.

17. So as per the submission of the counsel for the defendants, the road is admitted i.e., the 'B' schedule. The court commissioner also filed the report, stating the existence of road and also the blockage done by the defendants by erecting barbed wires and digging trench. Also at the time of arguments, counsel for the defendants stated that the Gowramma i.e., the defendant No.8 has been benefited by getting same measurement of land in front of her property i.e., on the western side of her property, which is also eastern side of the plaintiffs property.



18. As per the records, the court opines that the defendants No.1 to 8 have dug the trench and erected barbed wires to restrain the plaintiff from using the 'B' schedule road. As of now, the documents, the admissions and commissioner report establish the usage of 'B' schedule road by the plaintiffs. The contention of the counsel for the defendants that there is alternative road for the plaintiffs to reach their property is not substantially established at this stage and mere production of photographs is not sufficient.

19. There is no village map produced to show that the plaintiffs are having alternative road to reach their property. If really the plaintiffs had alternative road, then they cannot seek road on the property of defendant No.8, but the present case is not so, because, the defendant No.8 has admitted the existence of road and also the defendant No.8 receiving same measurement of land in her favour. As already stated, though it needs a full fledged trial, but now the documents are sufficient to establish that there is 'B' schedule road for the ingress and egress.

20. The defendants have intentionally dugged trench on the road and have blocked through barbed wires. Even this court has noted the submission of the counsel that the trench is closed and barbed wires are removed, but the commissioner report says that the defendants have not removed the barbed wires nor closed the trench. Certainly, the plaintiffs are agriculturist and having coconut farm,



where they need to have access through vehicles to bring the agriculture produce out of the land.

21. The plaintiffs are entitled to use the 'B' schedule road and also he is entitled to close the trench and remove the barbed wires for his peaceful usage of the road. The plaintiffs have also filed application for police protection, where the protection of the police to close the trench and remove the barbed wires is necessary, hence, the separate order will be passed on I.A.No.4 regarding the said aspect by relying upon **Smt.Karisiddamma and others Vs. Smt.Sanna Kenchamma ILR 2010 KAR 1197 and Papanna Vs. Nagachari, ILR 1996 Kar 1271.**

22. The applicant No.2 has made out a prima-facie case, as of now the plaintiffs have produced acceptable documents, which goes to show that they have a better case. If the defendants interfere, certainly, the plaintiffs will be put to untold hardship. The balance of convenience lies in favour of the plaintiffs. As of now the defendants have no right to block the suit 'B' schedule road. Hence, with these observations, I answer point No.1 in the Affirmative.

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

ORDER

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



Further, the defendants are restrained from putting up any obstructions or closing the road or putting up any fence or waste materials or digging the trench in order to block the suit 'B' schedule road till disposal of the suit.

Also the plaintiffs are entitled to close the trench and remove the barbed wires through police protection.

The defendants shall not obstruct the usage of the suit 'B' schedule road.

(Dictated to the Stenographer, typed by her to computer, revised, corrected and then pronounced in the open Court, this the 22nd day of June 2023)

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