

KACM400005322018



Govt. of
Karnataka
[C.R.P. 67]

TITLE SHEET FOR JUDGMENT IN SUITS

**Form No. 9 (Civil) Title
Sheet for Judgment
In Suits (R. P. 91)**

**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE**

**PRESENT: Smt. Suraksha K.K. B.B.M.,LL.B.,
I Addl. Civil Judge & JMFC.,
Mudigere.**

DATED THIS THE 11th DAY OF AUGUST 2026

ORIGINAL SUIT No:74/2018

BETWEEN:

H.N.Prathap,
Aged about 47 years,
S/o Late H.S.Nanjundegowda,
R/o B.Hosahalli Village and Post,
Banakal Hobli, Mudigere Taluk,
Chickmagalur District.

.... Plaintiff

(By Sri. K.M.Prashanth, Adv.,)

AND :

H.N.Prashanth,
Aged about 45 years,
S/o Late. H.S.Nanjundegowda,
R/o B.Hosahalli Village and Post,
Banakal Hobli, Mudigere Taluk,
Chickmagalur District.

.... Defendant

(By Sri. M.V.Jayaraj, Adv.,)



Date of Institution of suit	17.05.2018
Nature of the suit	Declaration, mandatory injunction & permanent injunction
Date of commencement of evidence	12.12.2018
Date of closure of the evidence	18.03.2026
Date of pronouncement of judgment	11.08.2026
Total duration:	Years, Months, Days. 08 02 25

(Suraksha K.K.)
I Addl. Civil Judge & JMFC.,
Mudigere.

JUDGMENT

This is the suit for declaration, mandatory injunction and permanent injunction filed by the plaintiff against the defendant seeking for the relief to declare that the plaintiff has acquire the easementary right by prescription in and upon the road existing the suit 'B' schedule property and seeking direction to remove the poles and sheet placed on them across the road to obstruct and to prevent the free movement of the plaintiff and his family members and to restrain the



defendant, his men, agents or any other persons from causing disturbance or obstruction to the free movement/ use of road existed in the suit 'B' schedule property by the plaintiff or his family members to reach the portion of the house situated in 'B' schedule property belongs to the plaintiff.

2. The plaintiff's case in brief as follows:

It is the case of the plaintiff that the property measuring 1 acre 17 guntas in Sy.No.433 of B.Hosahalli Village, Mudigere Taluk has fallen to the share of H.S.Nanjundegowda in family partition and after his demise, an extent of 0.28 guntas of plantation land in Sy.No.433 has fallen to the share of the plaintiff (which is shown as plaint 'A' schedule property) and remaining 0.29 guntas in Sy.No.433 has fallen to the share of the defendant (which is shown as suit 'B' schedule property). Other than the suit 'A' schedule property, the property in Sy.No.368, 371, 374/3 and 375/1 of B.Hosahalli Village, Banakal Hobli, Mudigere Taluk has also fallen to the share of the plaintiff herein (which is shown as suit 'C' schedule property).

3. Such being so, the plaintiff and defendant were residing together with their parents in residential house situated in Sy.No.433 of B.Hosahalli Village, Banakal Hobli, Mudigere Taluk. The said residential house is located in 0.04 guntas of Kharab land in Sy.No.433 of B.Hosahalli Village and



the said house measures 64 X 31 ft. in extent. In the partition held between the family members as per partition deed dated 19.08.2008, one portion of the house measuring 64 X 15½ ft. along with shed has been allotted to the share of the plaintiff and remaining portion i.e., 64 X 15½ ft. has fallen to the share of the defendant. After the survey the property where in the residential house is situated is shown in the plaint 'B' schedule property. With regard to the portion of the house belongs to the plaintiff, there was a panchayath held on 22.02.2016 and the defendant has failed to adhere and act in terms of the said panchayath.

4. The plaintiff further contends that, there is main road which runs from North to South direction from Bharathibailu to Chakkamakki at B.Hosahalli Village, a mud road of about 10 to 12 ft. in width branches out which takes a turn towards eastern direction and passes towards the plaint 'B' schedule property, at the entrance of the plaint 'B' schedule property on the western side the defendant has put up an iron gate so as to prevent and obstruct the free movement of the plaintiff, his family members and his estate worker. After entering the said plaint 'B' schedule property, the said road passes by the side of the residential house situated in 0.04 guntas of Kharab land and proceeds towards the plaint 'A' and 'C' schedule properties. The plaintiff in order to go to the portion of the house in the plaint 'B' schedule property and to come back



and also to reach his land in plaint 'A' and 'C' schedule properties, he has to pass through the road existed in plaint 'B' schedule property. The said road is being used by the plaintiff from the past 20 years without any hurdle, obstacle or objection and peacefully and therefore he has acquired the right of the easement by prescription without passing through the plaint 'B' schedule property, the plaintiff cannot reach his portion of house situated as well as other lands in the plaint 'A' and 'C' schedule properties. Hence this suit.

5. On service of suit summons, the defendant has appeared through his counsel and filed the written statement as follows.

The defendant has admitted the partition and allotment of the share between the plaintiff and defendant, as he contends in the plaint and further denied all the other contention raised by the plaintiff in his pleading. Further, the defendant contends that there is no road existed in plaint 'B' schedule property as contended by the plaintiff herein. There is an alternative road to reach the property of the plaintiff, but the plaintiff has not produced any documents i.e., survey sketch of village map to show that there is a road existing to reach his house. The iron gate of the western side of the plaint 'B' schedule property was fixed by the father of the defendant during his life time in order to prevent the cattle and other animal and the same is used by the plaintiff and



defendant. This defendant has never obstructed the plaintiff as alleged in the plaint. The defendant further contends that on 22.12.2019 the plaintiff, defendant and elders of the village and relatives have convened the panchayath, as per the settlement the plaintiff was agreed to provide 6 ft. place for road in order to reach the property of the defendant. The defendant has agreed to pay a sum of Rs.75,000/- to the plaintiff on or before 10.04.2020 and the defendant has paid the said amount. As per the said panchayath defendant has removed the shed situated in front of the cattle shed and defendant has given the land situated beside the Aledevarugudi before 10.04.2020. In the said land plaintiff has also constructed cattle shed. But, as per the said panchayath the plaintiff has not obey the terms of the panchayath and after the said panchayath the plaintiff has vacated the house and constructed the new house and residing separately. The defendant and his mother are residing together. Hence the defendant prays to dismiss the suit.

6. On the basis of the above pleading this Court has framed the following issues;

- 1. Whether the plaintiff proves the existence of road in the plaint 'B' schedule property as averred in the plaint? If so, whether the plaintiff proves that he has got a prescriptive**



easementary right over the said road?

2. Whether the plaintiff proves the alleged obstruction by the defendant over the said road?

3. Whether the plaintiff is entitled for the reliefs as claimed in the plaint?

4. What order or decree?

7. In proof of his case, the plaintiff has got examined himself as PW1 and got marked documents at Ex.P1 to P21 and closed his side. On the other hand, the defendant got examined himself as DW1 and got marked the documents as Ex.D1 to 26 and also examined one witness by name Sudhir as DW2.

8. Heard the arguments addressed by learned counsel for plaintiff and defendant and also perused the entire materials on record. For the reasons stated below, the findings of this Court to the above issues are as follows:

Issue No.1 : **Negative**

Issue No.2 : **Negative**

Issue No.3 : **Negative**

Issue No.4 : As per the final order
for the following:



REASONS

9. Issues No.1 to 3: Since these issues require common appreciation of materials on record so as to arrive at a conclusion of the dispute involved therein, they are taken for common discussion so as to avoid repetitions:

In order to substantiate his case, the plaintiff filed affidavit in lieu of his examination-in-chief, examined as PW1 and got marked the documents at Ex.P1 to 21. Ex.P1 Certified copy of partition deed dt: 19.08.2008 wherein it shows that the partition was held between the family members of the plaintiff and defendant and suit 'C' schedule properties and property measuring 0.28 guntas which is shown as suit 'A' schedule property along with other properties has been allotted to the share of the plaintiff herein. Ex.P2 and 3 Certified copy of Index of land and Record of right, which shows the earlier ownership over the suit 'A' and 'B' schedule properties, Ex.P4 Mutation register extract, Ex.P5 RTC pertaining to Sy.No.433/1 wherein the column No.9 shows that the defendant is the owner for property measuring 0.25 guntas in said survey number, Ex.P6 RTC pertaining to Sy.No.433/2 wherein the column No.9 shows that the plaintiff is the owner for property measuring 0.28 guntas in said survey number, Ex.P7 RTC pertaining to Sy.No.368 wherein the column No.9 shows that the plaintiff, defendant along with the other family members are having the joint ownership over



the said properties, Ex.P8 RTC pertaining to Sy.No.371 wherein the column No.9 shows that the plaintiff, defendant along with the other family members are having the joint ownership over the said property, Ex.P9 RTC pertaining to Sy.No.374/3 wherein the column No.9 shows that the plaintiff, defendant along with the other family members are having the joint ownership over the said property and Ex.P10 RTC pertaining to Sy.No.375/1 wherein the column No.9 shows that the plaintiff, defendant along with the other family members are having the joint ownership over the said property, Ex.P11 Tax paid receipt, Ex.P12 Atlas copies with respect to the Sy.No.433/1 which is standing in the name of defendant, Ex.P13 Certified copy of Tippani sheet, Ex.P14 complaint lodged by the plaintiff against the defendant before the Banakal police station, Ex.P15 endorsement issued by Banakal police, Ex.P16 Acknowledgment issued by Banakal Police, Ex.P17 to 20 Photographs and Ex.P21 Compact disc.

10. In counter defendant himself examined as DW1 and also marked Ex.D1 to 26, Ex.D1 Photograph, Ex.D2 document with respect to the settlement between the plaintiff and defendant in the presence of the elders and well wishers, Ex.D3 RTC pertaining to Sy.No.433/1 wherein the column No.9 shows that the defendant is the owner of the property measuring 0.25 gunas in the said survey number, Ex.D4 RTC pertaining to Sy.No.375/7 wherein the column No.9 shows



that the defendant is the owner of the property measuring 2.07 acres in the said survey number, Ex.D5 RTC pertaining to Sy.No.318/2 wherein the column No.9 shows that the wife of the defendant is the owner of the property measuring 1.17 acres in the said survey number, Ex.D6 RTC pertaining to Sy.No.317/1 wherein the column No.9 shows that the wife of the defendant is the owner of the property measuring 2.03 acres in the said survey number, Ex.D7 to 10 Mutation Register Extracts, Ex.D11 to 22 Tax paid receipts, Ex.D23 to 25 Electricity bill receipts and Ex.D26 kandayam paid receipt.

11. The present suit has been filed by the plaintiff against defendant by stating that suit 'A' schedule property in Sy.No.433 measuring 0.28 guntas fallen to the share of plaintiff and suit 'B' schedule property in Sy.No.433 measuring 0.29 guntas include 0.04 guntas Karab fallen tot he share of defendant under family partition deed, bearing No.531/08-09, dated 19.08.2008. Further plaintiff contended that the plaintiff and defendant were use to reside with their parents in a residential house, situated in Sy.No.433 within the Karab land measuring 0.04 guntas. During family partition, dated 19.08.2008 the said residential house totally measuring 64 x 31 ft., has been partitioned between plaintiff and defendant. Out of said family partition, residential house measuring 64 x 15½ ft., along with fire wood shed fallen to the share of plaintiff and the remaining 64 x 15½ ft., along with cattle



shed fallen to the share of defendant. On 22.02.2016 there was family settlement with respect to suit 'B' schedule property, but defendant fail to act as per family settlement and further he started to obstruct the way of plaintiff to his suit 'A' and 'C' property which passes through 'B' schedule property.

12. Plaintiff further contends that, in order to reach his portion of residential house in suit 'B' schedule property and to suit 'A' and 'C' schedule properties he has to pass through the road existed in suit 'B' schedule property, besides to the residential house and the plaintiff is using the said road from past 20 years, by way of easement by prescription and it is only the road existed to reach suit 'A' and 'C' schedule property and the portion of the residential house allotted to the plaintiff in suit 'B' schedule property.

13. In counter defendant contends that, there was a family settlement during 2016, wherein the plaintiff has agreed to hand over the portion of residential house allotted to him in suit 'B' schedule property and also to leave 6 ft., road to defendant in order to reach his properties and further defendant has agreed to pay him Rs.75,000/- for the same in the present of elder and well-wishers. Even though the defendant acted as per the family settlement, the plaintiff has come up with this suit only to harass the defendant. Moreover,



after the family partition the plaintiff has started to live separately from this defendant and the plaintiff is having other way to reach his properties and prays to dismiss the suit.

- 1.** The question is "whether the plaintiff proves the existence of road in suit 'B' schedule property?"
- 2.** If so, whether he is having any easement prescription?

14. In support of his contention plaintiff produced Ex.P1 i.e., the partition deed dated 19.08.2008, wherein, it is mentioned that the plaintiff, defendant, his mother and elder brother can use road, water, cattle shed and firewood shed in understanding manner and no one should interfere among themselves. But, there is no specific contention that the road existed in suit 'B' schedule property (which was allotted to the share of the defendant) is the only way to reach the suit 'A' and 'C' schedule properties and the portion allotted in suit 'B' schedule property and plaintiff is not having any other way. During cross examination the plaintiff has failed to prove the same. Moreover, the plaintiff himself contends that after the family partition he and his family were leaving separately by constructing house in the property, which is standing in the name of his wife. Even though the plaintiff contends that



there is a road existed in suit 'B' schedule property, which passes through suit 'B' schedule property besides to the residential house, none document disclose the same. On the other, neither the plaintiff has examined any witnesses nor produced any documents in order to prove the existence of road in suit 'B' schedule poverty.

15. Further he contends that, from past 20 years he, his family members and his workers were using this road existed in said 'B' schedule property in order to reach the suit 'A' and 'C' schedule properties and he has acquired the said right under easement by prescription.

16. As per Section 15 of Easement Act in order to claim right one must enjoy his right to way without any interfere for 20 years and the same must be in the knowledge of owner of said property.

17. But herein the present case, the plaintiff himself contends that during 2008 he acquired right over the suit 'A' and 'C' properties through family partition and further he contends that, since 20 years he and his family were using road existed in suit 'B' schedule property. Even though, it is presumed that, since they are leaving jointly defendant has consented to use the road existed suit 'B' schedule property which was allotted to the share of defendant during partition, they why the said contention is not specifically mentioned in



Ex.P1. Further, the settlement between the family members and institution of suit prior to present suit with respect to family properties shows that the plaintiff had failed to prove the enjoyment of his right without any interruption for 20 years.

18. In so far as, alleged obstruction by defendant is concerned plaintiff contended that the defendant without having any right has put an iron gate at the entrance of the suit 'B' schedule property only to obstruct the plaintiff from making use of the road existed in suit 'B' schedule property and also to obstruct the free movement of the plaintiff and his family members. When the plaintiff question the same with the defendant, he has also tried to assault the plaintiff and the plaintiff has also lodged a complaint with respect to the same.

19. As per above discussion plaintiff has failed to prove the obstruction of road existed over suit 'B' schedule property. When there is no road existed in suit 'B' schedule property as contended by the plaintiff the question of interference and obstruction doesn't arise at all.

20. In so far as entitlement is concerned, the present suit has been filed by the plaintiff against the defendant, by seeking a relief to declare the existence of road in suit 'B' schedule property, direction to remove the gate installed in



suit 'B' schedule property by way of mandatory Injunction and permanent injunction. As per above discussion, the plaintiff has utterly failed to prove that the road existed in suit 'B' schedule property adjoining to the residential house and further he also failed to prove the peaceful enjoyment of the said road by the plaintiff for 20 year as per section 15 of easementary act through oral or documentary evidence. Hence this Court answered issues No.1 to 3 in '**Negative**'.

21. Issue No.4: On the basis above discussion on this Court proceed to pass the following;

ORDER

**The suit filed by the
plaintiff is hereby dismissed
with cost.**

**In view of the above, all
pending IAs are disposed of.**

Draw decree accordingly.

(Dictated to the Stenographer, directly typed by him on computer, corrected and then pronounced by me in the open court on **11th day of AUGUST 2026, at Mudigere.**)

(Suraksha K.K.)
I Addl. Civil Judge & JMFC.,
Mudigere.

**::ANNEXURE::****LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS:-**

PW.1 : H.N.Prathap

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFFS:-

Ex.P1 : Certified copy of partition deed dt: 19.08.2008
Ex.P2 : Certified copy of Index of land
Ex.P3 : Certified copy of Record of right
Ex.P4 : Mutation register extract
Ex.P5 to 10 : RTC extract
Ex.P11 : Tax paid receipt
Ex.P12 : Certified copy of Atlas
Ex.P13 : Certified copy of Tippani sheet
Ex.P14 : Copy of complaint
Ex.P15 : Compliant receipt
Ex.P16 : Acknowledgment issued by Banakal Police
Ex.P17 to 20 : Photographs
Ex.P21 : Compact disc

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANT:-

DW.1 : H.N.Prashanth
DW.2 : Sudhir



LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENDANT:-

Ex.D1 : Photograph
Ex.D2 : Agreement
Ex.D2(a) : Signature of DW1
Ex.D2(b) : Signature of DW2
Ex.D3 to 6 : RTC extracts
Ex.D7 to 10 : Mutation Register Extracts
Ex.D11 to 22 : Tax paid receipts
Ex.D23 to 25 : Current bill receipts
Ex.D26 : Form No.3 receipt

(Suraksha K.K.)
I Addl. Civil Judge & JMFC.,
Mudigere.

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