



IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
MUDIGERE

Present: **Sri. Vishwanath A.,** B.B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

DATED: THIS THE 6th DAY OF FEBRUARY 2025

ORIGINAL SUIT No: 41/2024

BETWEEN :

N.K. Kalavathi,
Aged about 56 years,
W/o H.A. Ravikumar,
R/o Hullemage, Kunduru Village,
Banakal Hobli, Mudigere Taluk.

.... Plaintiff

(By Sri. K.T. Mahesh, Adv.,)

AND :

- 1.** Kumar @ Aruna,
Aged about 56 years,
S/o Late Manjegowda,
R/o Kataradahalli, Aldur Post,
Chikkamagaluru Taluk & District.
- 2.** K.M. Ramegowda,
Aged about 55 years,
S/o Late Marigowda.
- 3.** K.N. Mahesh.
Aged about 45 years,
S/o Nanjegowda.
- 4.** Paramesha @ Chandregowda,
Aged about 55 years,
S/o Late Kalegowda.
- 5.** Jagadish. K.M.,
Aged about 65 years,



S/o Late Manjegowda.
6. Nikil,
Aged about 23 years,
S/o Late Marigowda.

Defendants No.2 to 6 are
R/o Hullemane, Kunduru Village,
Banakal Hobli, Mudigere Taluk.

... Defendants

(By Sri. N.S. Jayaram, Adv.)

PARTIES ON I.A.NO.I

BETWEEN :

N.K. Kalavathi

... Applicant

AND :

Kumar @ Aruna & others

... Opponents

i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 of CPC
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	18.04.2024
iv	Number of the application	I
v	The date on which the objections are filed by different opponents	Written Statements dated 22.07.2024 treated as objection.
vi	The date on which the orders were passed on the said application	06.02.2025

(Vishwanath A.)
Prl. Civil Judge & JMFC,
Mudigere.



ORDERS ON I.A.NO.I

This application is filed by the plaintiff seeking an interim order of temporary injunction restraining the defendants from encroaching upon the western side of suit schedule property, pending disposal of the above suit.

2. It is the case of plaintiff that she is the absolute owner in possession of the suit schedule property. This being the case, the defendants who are the residents of same village, have on 14.04.2024, tried to encroach upon the suit schedule property so as to construct an embankment. Though the plaintiff has requested the defendants not to do such an act, they are trying to construct the embankment. On the above averments, the plaintiff has sought for allowing the application.

3. Defendants have filed a memo adopting the written statement as objections to the present application. In the written statement, the defendants have admitted that the suit property belongs to the plaintiff but denied all other plaint averments. Defendants have contended that the plaintiff is not residing in the suit property ever since the time of her father. She is the native of Nidagodu and married to Sri. J.A. Ravikumar of Hullemane and she is residing therein since form her marriage. The plaintiff's mother-in-law Smt. Leelavathamma has also instituted a suit against the very defendants on the same cause of action and also averred that she is also residing in the suit property of said suit in O.S. No. 42/2024. Both the plaintiff and Smt. Leelavathamma are alleging



that the defendants are trying to construct embankment in their respective properties. The intention of plaintiff, her husband and Smt. Leelavathamma is to see that the defendants shall not cultivate their lands and shall leave the same fallow.

4. Defendants have further contended that the land in Sy. No. 138, 146, 148, 150, 151 and others are agricultural lands and being irrigated through the embankment situated in government land in Sy. No. 130. The said embankment is in existence since 200 years. Without there being the water from said embankment, the cultivators of those lands including the defendants cannot cultivate their lands. There is a road through which all the villagers who are having agricultural lands, has to reach their respective lands for the purpose of cultivation. The intention of plaintiff is to see that the defendants shall not access the said road also. The defendants and other villagers have given representation to the Tahsildar, Mudigere, who has warned the plaintiff, Smt. Leelavathamma and H.A Ravikumar not to obstruct the villagers from using water from the embankment and also in using the road to reach their agricultural lands. Mudigere Police have also warned them. The plaintiff has brought this suit only to harass the defendants and after obtaining ex-parte injunction, they are trying to obstruct the defendants from accessing the road and cultivating their respective lands. On the above averments, the defendants have sought for rejection of the application.

5. Having heard the arguments addressed on behalf of the respective parties, this Court has carefully perused the entire



materials available on record. In view of the above contentions, the following points arise for consideration:

- 1. Whether the plaintiff has made out prima-facie case in her favour to grant temporary injunction as sought for?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff will be put to irreparable injury if temporary injunction is not granted in her favour?**
- 4. What order?**

6. The answers of this Court on the above points are as under:

Point No.1 : **In the Negative,**

Point No.2 : **In the Negative,**

Point No.3 : **In the Negative,**

Point No.4 : **As per final order**

for the following:

REASONS

7. POINTS No.1 TO 3: Since these points require common consideration of facts and materials, they are taken for common discussion so as to avoid repetitions.

It is not in dispute that the plaintiff is the owner of suit schedule property. Suit schedule property is a land to an extent of 1.10 acre in Sy. No.152 of Kunduru Village, Banakal Hobli, Mudigere Taluk. The defendants have contended that the plaintiff is residing at Hullemane along with her husband and she is not



residing in the suit property. Plaintiff herself has shown her address as Hullemane. The fact that the plaintiff is not residing in the suit property does not mean that she is not in possession of suit property. The revenue entries pertaining to suit property is in the name of plaintiff and it could be seen that the suit property is cultivated with coffee. The admission of defendants if read alongside the revenue documents pertaining to suit property, it is at this stage be considered that the plaintiff is in possession of the suit property.

8. It is the specific allegation of plaintiff that the defendants who are the residents of same village, are trying to encroach upon the suit schedule property so as to construct embankment to the stream. As could be seen from the boundary furnished to suit property, there is a stream flowing on the western side of suit schedule property. The defendants have contended that the agricultural lands are being irrigated through the embankment situated in government land in Sy. No. 130 and the same is in existence since 200 years. Without there being the water from said embankment, the cultivators of those lands including the defendants cannot cultivate their lands. Defendants have further contended that there is a road through which all the villagers who are having agricultural lands shall access and reach their respective lands for cultivation. Existence of road and stream could be seen from the photographs and videos produced by the very plaintiff.

9. The crucial aspect which needs to be observed is that the very photographs and videos produced by the plaintiff goes to



show that the tar road ends to the stream and after passing through the stream for some distance, there is a mud road which runs further and it is at that spot the embankment can also be seen. As per the defendants, the said embankment is in existence from past 200 years and it is from the said embankment, the neighboring land holders are drawing water for the purpose of irrigating their respective lands. As per the RTC, the suit property is cultivated with coffee and that the spot where the embankment could be seen is not surrounded with coffee plants. If this aspect is carefully considered, the thing which is clear at this stage is the existence of embankment. The defendants have produced the copies of communications wherein it could be seen that the group of villagers have complained to the Thasildar, Mudigere, alleging that the husband of plaintiff herein is causing obstruction to the free flow of water in the stream.

10. Though the plaintiff has contended that the defendants are trying to construct embankment in the suit property, but as per the defendants, the embankment is in existence from past 200 years and the same is in government land in Sy. No.130. As noted earlier, the embankment is situated next to the mud road and not in a land surrounded with coffee plants. When there is an embankment through which the defendants and other villagers are already drawing water from the stream, why should they construct another embankment and that too in the suit schedule property is a matter which needs consideration after full-fledged trial. This being the case, it cannot at this stage be considered that the defendants are trying to construct embankment in the suit property



by encroaching the same as alleged. Drawing of water from the stream, through the land of others, for the purpose of irrigation shall have to be under compliance of 90A of the Karnataka Land Revenue Act. However, in the case on hand, the embankment is already in existence. There is nothing available on record at this stage which supports the contention of plaintiff that the defendants are trying to encroach upon the suit property so as to construct an embankment to the stream. Circumstances of the case being thus, this Court at this stage finds no prima-facie case in favour of plaintiff. In absence of prima-facie case, looking into balance of convenience and irreparable injury does not arise as held by our Hon'ble High Court in the case of Sri. **Gowrishankara Swamigalu Vs Sri. Siddaganga Mutt** in **ILR 1898 KAR 1701**. Hence, points No.1 to 3 are answered in **Negative**.

11. POINT No.4: In view of the above findings recorded on points No.1 to 3, this Court is of view to reject the present application. Hence, the following;

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is hereby rejected.

**For Issues & for objections to IA No. 4
by: 03.03.2025.**

KACM400007502024



9

OS No.41/2024

(Dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **06th day of February, 2025**).

(Vishwanath A.)
Pri. Civil Judge & JMFC.,
Mudigere.

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