



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

DATED: THIS THE 21st DAY OF JUNE 2023

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

ORIGINAL SUIT No: 173/2020

BETWEEN :

Sri. Sheshappa
S/o Kalu Gowda,
Aged about 70 years,
R/o Bedakki,
Rep. by his GPA holder Sri.Krishnappa,
S/o Sheshappa,
Aged about 38 years,
R/o Bedakki, Kalasa,
Mudigere Taluk, Chikkamagaluru
District.

... Plaintiff

(By Sri. K.S.Ananthesh, Adv.,)

AND :

1. Sri. Krishna Shetty
S/o Babu Shetty,
Aged about 55 years.
2. Smt. Kasthuri Shetty
W/o Krishna Shetty,
Aged about 50 years,



Both are R/o K.M.Road, Kalasa,
Kalasa Hobli, Mudigere Taluk,
Chikkamagaluru District.

...Defendants

(By Sri.T.Ashoka, Adv.,)

PARTIES ON I.A.NO.I

BETWEEN :

Sri.Krishnappa

... Applicant

AND :

Sri. Krishna Shetty & Anr.

...Opponents

ORDERS ON I.A.NO.I

The Plaintiff has filed the present application under Order XXXIX rule 1 & 2 of Code of Civil Procedure, seeking an interim order of temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the present suit.

2. The Plaintiff has contended that, he is the absolute owner in possession and enjoyment of the suit schedule property having acquired the same through grant under land reforms Act. Ever since then the plaintiff is in possession and enjoyment of the suit schedule property. The



defendants having no manner of right whatsoever over the suit property, they are trying to trespass into the suit property and causing obstruction and also threatening to dispossess the plaintiff from suit schedule property. On these averments the plaintiff has sought for allowing the present application.

3. The defendants have filed a memo adopting the written statement as objection to the present application. It is the defendant No.1 who has filed his written Statement and the same is adopted by the defendant No.2. In the written statement, the defendants have denied the plaint averments contending that prior to the land grant in favor of plaintiff, there existed a mud road in the suit property which starts from Kalasa-Kuduremukha Road and runs over the suit property which is used by the villagers of Olabailu, Devarapalu and other villages. The stream in between the said road was bridged using wooden logs and later the cement bridge is also constructed. The defendant No.2 has also purchased lands in Sy. No. 409/1, 409/2, 411/3 and 411/1 and it is the said mud road which is also used by the defendant No.2 to reach out the above lands and there is no alternative road. In order to encroach the said mud road,



the plaintiff has filed the above false suit having suppressed the existence of mud road. On these averments, the defendants have sought for rejection of the application.

4. In view of the above contentions, the following points arise for consideration.

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

5. Heard both side and perused the entire materials available on record. Now, the findings of this Court on the above points are as follows:

Point No.1 : ***In the Affirmative***

Point No.2 : ***In the Partly Affirmative***

Point No.3 : ***In the Partly Affirmative***

Point No.4 : *As per final order*

for the following:



REASONS

6. POINT No.1: The Plaintiff has filed the above suit for the decree of bare permanent injunction against the defendants with respect to the suit schedule property. The present application is filed along with the suit seeking interim order of temporary injunction restraining the defendants from interfering in any manner with the plaintiff's possession and enjoyment of the suit schedule property.

7. To show that the plaintiff has got prima-facie case, the GPA holder of the plaintiff has deposed to an affidavit filed in support of the present application wherein stated that the plaintiff is the owner in possession and enjoyment of the suit property which is granted in his favor. In support of this, the plaintiff has produced the copy of grant certificate in Form No.1 wherein it can be seen that the land in Sy. No. 406/2 to an extent of 1 acre and Sy. No. 407/2 to an extent of 0.21½ acres is granted in favor of plaintiff. Copies of the Podi Tippan discloses that the land of plaintiff in Sy. No. 407/2 was renumbered as 407/4 and in the said block, 18 guntas of land is reserved as Karab i.e., 0.05 guntas for house and 0.13 guntas for road. RTC also depicts the same. Therefore, the remaining extent of land in Sy. No.



407/4 is 15 guntas which is the subject matter of the present suit.

8. During the course of arguments, the learned counsel for plaintiff has vehemently argued that the Karab land to an extent of 0.13 guntas in the suit property is nothing but the Kalasa-Kuduremukha Road. Apart from this road there is no other road much less the mud road as alleged by the defendants was never existed in the suit property. On the other hand, the learned counsel for defendants has submitted that there is a mud road situated in the suit property which is not only used by the defendants but also by the villagers of Olabailu, Devarapalu and other Villages to reach their respective lands. In response to this submissions of learned counsel for defendants, the learned counsel for plaintiff has filed a memo with photographs contending that the alleged mud road never existed and that the same is created by the defendants with their supporters. There is also an alternative road to reach the lands which was also used by the defendants herein and since the defendants have constructed the building adjacent to the suit property they are making hectic efforts to form road in the suit property



claiming that there was a mud road situated from time immemorial.

9. Though, the survey sketches and podi tippan produced by the plaintiff shows the road in between the land granted to him, there is no mention of any other road to either boundary of the said land whereas the drone view photographs submitted by the defendants depict the existence of mud road. Though the defendants have contended that the existence of mud road as claimed by them also finds place in the village map but no such maps are produced in the present case. Therefore, considering the revenue documents placed on record at this stage, this Court is of view that the plaintiff has made out prima-facie case. Hence, point No.1 is answered in **Affirmative**.

10. POINT NO.2 AND 3: Since these points require common consideration, they are taken for discussion together as to avoid repetition of facts.

The case of plaintiff is that he is the owner in possession of the suit schedule property whereas, the defendants are trying to obstruct the plaintiff possession and enjoyment of the said land. On the other hand, the



defendants have contended that there exists a mud road which connects their land to the Kalasa-Kuduremukha Road and there is no other alternative road to reach their lands. Though the defendants have not produced any revenue records showing existence of such mud road, they have produced the drone view photographs which depicts the existence of mud road as alleged by them and the evidential value of these photographs require to be considered at the final adjudication. Materials on record further discloses that it is for this dispute with respect to the alleged mud road, the parties have approached jurisdictional police and the parties are seen to have recorded their respective statements.

11. Learned counsel for plaintiff submits that though there was no mud road whatsoever as claimed by the defendants, the defendant No.1 having used his influence has formed the said road for his individual use that too by trespassing into the plaintiff property and no other villagers are using the said road. Therefore, it is at this stage can be considered that the parties are at litigation with respect to the alleged mud road in support of which no records are placed at this stage and the aspect of existence of mud road



shall have to be decided on full-fledged trial. Thus, at this stage the balance of convenience not only lies in favor of plaintiff but also on the defendants who stated to have no alternative road to reach their lands. Moreover, on granting or rejecting the temporary injunction, both parties will be put to injury which may also lead for multiplicity of proceedings and also result in changing the nature and extent of suit property. Therefore, this Court considers to direct both the parties to maintain status-quo with respect to the possession, nature and extent of the suit schedule property till disposal of the suit. Hence, Point No. 2 and 3 are answered in **Partly Affirmative**.

12. POINT No.4: In view of the above findings on point No.1 to 3, this Court proceed to pass the following.

ORDER

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

It is hereby directed that both parties shall maintain status-quo with respect to the



***possession, nature and extent of the suit
schedule property till disposal of the suit.***

For Issues by:

*(Dictated to the stenographer, typed by her on computer, corrected and
then pronounced by me in the open court on this the **21st day of June, 2023**)*

Sd/-

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

***BSM**