



**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
MUDIGERE.**

: PRESENT :

**Sri PRAKASH P.M., M.B.A., LL.B.,
Senior Civil Judge and J.M.F.C.,
Mudigere.**

Dated this the 6th day of January 2026

R.A. No.14/2025

**Appellants/: 1. Smt. G.R. Vishalamma,
Plaintiffs W/o late M.S. Subbegowda,
Aged about 76 years**

Since dead by legal heirs

**1. Sri. M.S. Harish,
S/o late M.S. Subbegowda
Aged about 58 years**

**2. Sri. M.S. Mahesh,
S/o late M.S. Subbegowda
Aged about 58 years**

**Both are residing at
Maddikere, Halekere Village,
Billur Post, Mudigere Taluk,
Chikkamagaluru District.**

(Rep. by Sri. D.S., Advocate)



- V/s-

Respondents/ : 1. **Smt. B.S. Manjula,**
Defendants W/o B.C. Chandregowda,
Aged about 67 years

2. **Sri. B.C. Chandregowda,**
S/o Late Channe Gowda,
Aged about 67 years

Both are Residing at
Billur Village & Post,
Mudigere Taluk,
Chikkamagaluru District.

(Rep. by Sri. M.V.J., Advocate)

PARTIES TO IA.No.I.

Applicants/: Smt. G.R. Vishalamma and others
Appellants/Plaintiffs.

- V/s-

Respondents/: Smt. B.S. Manjula and another
Respondents/Defendants



**ORDERS ON I.A.NO. I FILED BY THE APPELLANTS/
PLAINTIFFS UNDER ORDER 39 RULE 1 AND 2 OF CPC**

This appeal is filed by the appellants/plaintiffs under Order 41 Rule 1 of CPC., against the judgment and decree in **O.S. No. 130/2015 dated: 09.10.2025** passed by the Learned Addl. Civil Judge and JMFC., Mudigere.

2. Appellants and respondents were the plaintiffs and defendants before the trial court. For sake of convenience they are referred at their rank in the trial court.

3. Now, the appellants / plaintiffs have filed this I.A. No.I U/O order 39 Rule 1 and 2 of C.P.C. seeking to pass an order of temporary injunction restraining the respondents 1 & 2, their servants, agents, men from trespassing, obstructing, cutting or blocking the road which leads from the properties of the respondent No.1 in Survey No. 122 & 123/2 of Kadidalu village to the Appeal Schedule Property belongs to the appellants, pending adjudication of the above appeal.

4. In the affidavit accompanying with IA the Appellant No.1/plaintiff No.1 stated that, they are the absolute owners



of the Coffee Plantations, bearing Sy. Nos. 123/1 and 198/2, situated in Kadidalu Village, Kasaba Hobli, Mudigere Taluk, Chikkamagaluru District. These properties form a composite block, which are collectively referred to as the suit schedule properties, measuring an extent of 1-27 acres. The suit schedule properties are located adjacent to land owned by Defendant No.1, who had also purchased this land from the Plaintiff's family members. Both the suit schedule properties and Defendant No. 1's property have been ancestral properties. It is stated that, since time immemorial, a road has existed between the suit schedule properties and Defendant No. 1's land, which is the only access to reach the suit schedule properties. The Plaintiff has been using this road by way of easement and has no alternative access to the properties. The Plaintiff alleges that, in light of the ongoing dispute between the parties, Defendant Nos. 1 and 2, with malafide intent, have started blocking the access road by digging and undertaking other illegal activities. This has led the Plaintiff to file O.S. No. 130/2015 for a declaration regarding their easementary rights and to seek a permanent injunction, restraining the Defendants from



obstructing or blocking the road.

4a. It is further averred that, Appellant No. 1 was examined as PW-1, while Defendant No. 2 was examined as DW-1 in the Trial Court. Both parties produced several documents in support of their cases, and their respective witnesses were cross-examined. After the completion of the evidence, both parties filed I.A. No. 15 under Order 26 Rule 9 of the C.P.C., requesting the appointment of a Commissioner to conduct a spot inspection and report on the existence of a road to access the suit schedule properties. Sri. Raghavendra, an Advocate appointed as the Court Commissioner, conducted the inspection and submitted a report on 26-09-2024. The report confirmed that to access the suit schedule properties (Sy. No. 123/1), one must pass through the lands of Defendant Nos. 1 and 2, specifically Sy. Nos. 122 and 123/2. The road is approximately 12 feet wide and extends over a length of 100 meters. Furthermore, the Commissioner confirmed that the only alternative access is situated about 1.5 kilometers away from the suit schedule properties. The Trial Court, after adjudicating the suit, dismissed the same, which led to the filing of the present



appeal.

4b. It is further averred that, the Appellants has raised valid grounds in the appeal, seeking a reversal of the impugned judgment and decree. In accordance with the judgment and decree passed in O.S. No. 133/2015, the Respondents have filed Execution No. 14/2022 before the Principal Civil Judge's Court. In this execution petition, the Respondents allege that they have obstructed the construction work being carried out by the Appellants in the suit schedule properties and seek police protection for the implementation of the judgment and decree. The Court passed an order dated 09.10.2025 in the said Execution Petition, holding that the order is subject to the outcome of the suit in O.S. No. 130/2015. Taking advantage of the impugned judgment dismissing the Plaintiff's suit, the Respondents are attempting to construct on the road with the assistance of the jurisdictional police. This could result in the blocking of the Plaintiff's access to the suit schedule properties, rendering the appeal infructuous and causing significant hardship. In light of the circumstances, the Plaintiff prays to allow the present application.



5. On the other hand the respondents/defendants have filed objection to the said application wherein it is contended that, the application filed by the appellants is not maintainable under law or on facts. The appellants' husband, late M.S. Subbegowda, and his brother, M.S. Biligowda, were heirs of their father, late Sannegowda. Upon Sannegowda's death, his properties were inherited by his sons, M.S. Biligowda and M.S. Subbegowda. A family partition of these properties was carried out in 1966, later registered in 1976 (S.R. No. 70/1976-77). The properties were divided and both brothers enjoyed separate possession. In 1974, M.S. Subbegowda purchased properties from B.G. Appugowda and B.G. Menasegowda (S.R. No. 736/1974-75) in Kadidalu village, which were not part of the family partition. Similarly, M.S. Biligowda also acquired properties in 1974 (S.R. No. 737/1974-75). These properties were individually possessed, cultivated, and enjoyed, and hence were not joint family properties. M.S. Subbegowda purchased another 2 acres of land in 1974, and this was also not part of the partition. The respondents argue that the appellants have no claim over these properties as they



were acquired separately. The respondents are in possession of land near the properties of M.S. Biligowda. In 2014, the wife and children of M.S. Biligowda entered into a sale agreement with the first respondent to sell their properties for Rs. 9,37,500. The full sale consideration was paid, and a registered sale deed was executed. The appellants' son obstructed the respondent from changing the katha (property records) to the respondent's name. The appellants filed a suit (OS No. 188/2014) for partition and injunction, which was dismissed. The appellants also caused damage to the properties in 2015, including destroying fencing and stealing plants. The respondents filed another suit (OS No. 133/2015) for permanent injunction, which was granted in favor of the respondents. Despite the injunction, the appellants violated the court's orders, leading to an execution petition in 2022. Additionally, the respondents were granted permission by the Deputy Commissioner to convert 6 guntas of land for construction, but the appellants obstructed the respondents from leveling the soil, violating court orders. The respondents have fenced the property but left a 4-foot pathway to allow the appellants access. The respondents



claim that the appellants have suppressed key facts and come to court with unclean hands. The respondents argue that the appeal is filed solely to harass them. In light of these facts, the respondents pray that the appeal be dismissed.

6. Heard learned counsel for the appellant and respondents. Perused the materials on record. The following points arise for my consideration.

- 1) Whether the respondents/defendants have made out prima facie case for grant of temporary injunction in their favour ?
- 2) Whether the respondents/defendants prove that, balance of convenience lies in their favour?
- 3) Whether the respondents/defendants prove that, they will be put of irreparable loss and injury if temporary injunction is not granted?
- 4) What order?

7. My findings to above points as follows.



Point No.1 to 3:- In the Affirmative.

Point No.4:- As per final order for following.

:: R E A S O N S ::

8. POINT NO.1 to 3:- In order to avoid repetition of facts, these points taken up together for common discussion

9. The present appeal is preferred by the appellants/plaintiffs aggrieved by the judgment and decree passed by the learned Trial court in OS 130/2015 **dated: 09.10.2025.**

10. Now, this I.A. No. I is filed by the appellants / plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking an order of temporary injunction restraining the respondents, their servants, agents or anybody claiming through them from trespassing upon, obstructing, cutting or blocking the road leading from the lands of respondent No.1 bearing Sy. Nos.122 and 123/2 of Kadidalu Village to the appeal schedule property belonging to the appellants, pending disposal of the appeal.



11. The appellants contend that they are the absolute owners of coffee plantation lands bearing Sy. Nos.123/1 and 198/2 of Kadidalu Village forming a composite block. It is their specific case that ever since time immemorial, a road exists through the lands of respondent No.1 bearing Sy. Nos.122 and 123/2, which is the only access available to reach the suit schedule properties and that they have been using the same as an easement of necessity. It is further contended that during the pendency of the litigation, the respondents are attempting to block the said road by digging and putting up construction with the aid of police, thereby rendering the appeal infructuous and causing irreparable hardship to the appellants. It is also contended that during the trial, a Court Commissioner was appointed under Order XXVI Rule 9 CPC, who has inspected the spot and submitted a report dated 26-09-2024, wherein it is clearly stated that to reach the appellants' land bearing Sy. No.123/1, one has to pass through Sy. Nos.122 and 123/2 belonging to the respondents and that the said road is about 12 feet in width and approximately 100 meters in length. The Commissioner has also opined that the only alternative access is about 1.5



kilometers away. Relying upon the said report, the appellants contend that a strong prima facie case exists in their favour.

12. On the other hand, the respondents have filed detailed objections denying the existence of any easementary right in favour of the appellants. It is contended that the appellants have no manner of right over the respondents' property and that the alleged road is not a public or private road as claimed. The respondents have traced their title in detail and contended that the suit properties were purchased under registered sale deeds and that the appellants have repeatedly interfered with their possession, leading to several civil and criminal proceedings. It is further contended that the suit in O.S. No.130/2015 has already been dismissed and there was no interim order in favour of the appellants at any point of time. Hence, according to the respondents, the appellants are not entitled to any interim relief.

13. It is not in dispute that the suit filed by the appellants for declaration of easementary right and permanent injunction has been dismissed by the trial court



and the matter is now pending in appeal. It is equally not in dispute that during the trial, a Court Commissioner was appointed and a report was submitted indicating the existence of a road passing through the respondents' land and that the said road provides access to the appellants' property. The said report forms part of the trial court record and its evidentiary value will have to be finally assessed at the stage of disposal of the appeal.

14. At this interlocutory stage, this Court is not expected to decide the correctness or otherwise of the findings recorded by the trial court. However, the Commissioner's report prima facie indicates the existence of an access pathway and also suggests that the alternative route is at a considerable distance.

15. In matters relating to access and easementary rights, courts have consistently held that status quo should be preserved pending adjudication, so that the appeal does not become infructuous.

16. At this interlocutory stage, this Court is of the view



that it would be just and proper to preserve the subject matter of the appeal, so that neither party alters the existing factual position and the appeal is not rendered infructuous. Without expressing any opinion on the merits of the case and purely in the interest of justice, this Court deems it appropriate to direct the parties to maintain status quo. Thus, considering all these aspects and in totality of the case, this court is of the view that, the appellants/plaintiffs has established prima-facie case and balance of convenience in their favour and as such it is felt necessary to direct the appellants/plaintiffs and respondents/defendants to maintain status quo with respect to the nature and width of the existing access, as on the date of this order. Accordingly, I answer **Point No. 1 to 3 in the Affirmative.**

17. Point No. 4: In view of the observations on above points, I proceed to pass the following.

O R D E R

I.A. No. I filed by the appellants/
plaintiffs under order 39 rule 1 and 2
of CPC is **allowed in part.**



Both parties are directed to maintain **status quo** with respect to the nature and width of the existing access, as on the date of this order.

It is clarified that this order shall not confer any right, title or easement upon the appellants and is purely **subject to the final result of the appeal.**

It is also made clear that, the above order of status quo will be in force for a period of **five months** only.

Both the parties are directed to cooperate in disposal of this appeal within **five months.**

No order as to cost.

(Dictated to the stenographer, directly on computer, typed by her and corrected by me and pronounced in the open Court this the 06th day of January 2026.)

(PRAKASH P.M.)
Sr. Civil Judge and J.M.F.C.,
Mudigere.