

IN THE COURT OF THE CIVIL JUDGE AND JMFC,
N.R.PURA

Present:- B. Priyanka, B.A., LL.B.,
Civil Judge and JMFC, N. R. Pura.

Dated this the 12th day of November 2020

O. S. No.23/2020

- Plaintiffs:
1. Sri. L.C. Sridhar S/o Late Chinne Gowda, Aged about 68 years, Agriculturist, R/o Dwaramakki Village, N. R. Pura Taluk, Chikmagalur District.
 2. Sri. S. N. Praveena S/o Sri. Nabhirajaiah, Aged about 45 years, Businessman, @ Thirthankara Fuel Station, R/o Mahaveer Badavane, Basthimutt, N. R. Pura, Chikmagalur District.
 3. Sri. D. G. Prasanna S/o Sri. Devadas, Aged about 45 years, Government Employee, R/o Sunkadakatte, N. R. Pura Chikmagalur District.
 4. Sri. Ravishankar S/o Sri. N. K. Mahesh Kumar, Aged about 34 years, R/o Ambedkar Nagara, N. R. Pura, Chikmagalur District.
 5. Sri. Syed Ahmed S/o Sri. S. S. Hussain, Aged about 75 years, R/o Betgere, N. R. Pura, Chikmagalur District.
 6. Smt. Yeliyamma W/o Late Pollandevasi,

Aged about 78 years, R/o Jalluhanklu, Menasur Village, N. R. Pura, Chikmagalur District.

7. Sri. N. P. Kumar S/o Sri. Puttappa, Aged about 52 years, Agriculturist, R/o Sunkadakatte, N. R. Pura, Chikmagalur District.
8. Sri. J. Noorullakhan S/o Late Sri. Jaffarkhan, Aged about 70 years, Agriculturist, R/o Jasjid Mohalla, N. R. Pura, Chikmagalur District.
9. Sri. Ganesh N. M. S/o Sri. N. K. Mahesh Kumar, Aged about 52 years, Agriculturist, R/o Jalluhanklu, Menasur Village, N. R. Pura, Chikmagalur District.

(Rep. by Sri. V.G., Advocate)

V/S

Defendant: Sri. Laxmisena Swameeji, Aged about 35 years, Sri Kshetra Simhanagadde, Bastimutt, N. R. Pura Town and Taluk, Chikmagalur District.

(Rep. by Sri K.P.S., Advocate)

ORDERS ON I.A.NO.II FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 & 2 READ WITH SECTION 151 CPC.

The plaintiffs have filed this application under order XXXIX Rule 1 and 2 of CPC for ad-interim temporary

injunction restraining the defendant, his men, agents, servants and supporters or any other persons claiming under him from obstructing the use of the schedule road by the plaintiffs, land holders and general public or from causing acts of waste and damage to the schedule road.

SCHEDULE

A Public Road measuring 9.00 meters (approximately 30 feet) in width and 1000 meters in length (approximately 3200 feet) which runs from N. R. Pura Main Road (i.e. in between Jwalamalini High School and Thirthankara Fuel Station) and which will continue up to Jalluhankllu village (i.e. up to the house of Defendant No.6) and other agricultural lands, Houses belonging to plaintiffs and other villagers of Jalluhanklu village, N. R. Pura, Chikmagalur District.

2. In the affidavit annexed to IA, the plaintiff No.1 has contended that the present suit is filed by the plaintiffs against the defendant in the interest of public for the relief of permanent injunction restraining the defendant from interfering with the use of the public schedule road.

3. The plaintiff further submits that he and the other plaintiffs are the responsible citizens of N. R. Pura Taluk having houses and properties at Jalluhanklu,

Menasuru Village and he and some other plaintiffs are cultivating lands and in order to reach their respective properties they are using the public road and it starts from N. R. Pura main road and is situated between Jwalamalini High School and Thirthankara Fuel Station and continues up to Jalluhanklu village i.e. to the house of the plaintiff No.6. The schedule road is about 1000 meters in length and is being used by the plaintiffs and the general public from time immemorial.

4. The plaintiff further submits that the plaintiff No.2 has formed a layout and the layout plan approved by the Chief Officer, Pattana Panchayath and Joint Director of Town and Country Planning authority also reflects existence of the suit schedule road and the said road has also been mentioned in the sale deeds dated 14.05.1998 and 27.06.2001 belonging to the plaintiff No.2's wife.

5. The plaintiff No.1 further submits that the suit schedule road has been made and developed many times under various grants of Government and Zilla Panchayath, the work of concrete drainage and also been done by the concerned Government authority and except the suit

schedule road, the plaintiffs and the other residents of Jalluhanklu Village have no other alternative path to reach their respective properties and hence in the capacity of representatives, the present suit is filed.

6. The plaintiff further submits that the defendant colluding with the surveyor had put bound stones alleging that the suit schedule road belongs to the defendant. Therefore the plaintiffs and the other villagers by representation dated 24.06.2020 brought same to the notice of the Deputy Commissioner through ADLR, N. R. Pura and on 28.06.2020 the defendant along with his men came near the suit schedule road and tried to damage and thereby obstruct the plaintiff and the general public from using the schedule road and this illegal act of the defendant was resisted by the plaintiffs with great difficulty. In spite of several complaints the officials have not taken any action against the defendant and the defendant is making hurried attempts to cause damage to the schedule road without any right and he is the powerful person supported by large number of people and anti social elements and has threatened the plaintiffs and the other villagers with dire consequences and among these

grounds prays for the IA to be allowed.

7. On the other hand the defendant has filed a memo with a submission that the written statement filed by him to be treated as objections to IA No.2.

In his written statement, it is contended that there is no public road as described in the schedule by the plaintiffs and further submits that the Simhanagadde Bastimutt is the holy sacred Peeta for both Hindu and Jains and the Swamiji who ascended the Peeta is given the title Shri Lakshmisena Bhattaraka Swamiji and the Peeta is known for Shri Jwalamalini temple where the Deity Jwalamalini is worshiped by the devotees across the Nation. The affairs of the Peeta is administered and managed by the Swamiji and officials.

8. It is further contended that the Peeta had large extent of agricultural properties, but some were lost due to the Land Reforms Act and Inam Abolition Act as a result of improper representation and non representation of the Peeta before the forums at relevant points, but now the Peeta has only some extent of properties in several survey

numbers and it is also running educational institution and provides food and accommodation for those who seek the shelter of the Peeta.

9. It is further contended that the defendant is running the Jwalamalini Higher Primary Girls High School which is only Girls Higher Primary School in the surrounding Taluks and it is situated beside the N. R. Pura Koppa main road in Sy. No. 103 of Menasuru Village and behind school building a play ground is present and also parking lot. The main entrance of the school is facing the N. R. Pura - Koppa road and behind the same is parking lot and therefore a private road was been laid by the defendant for the purpose of entry into the school play ground and parking. The road runs in Sy. No. 103 which absolutely belongs to the defendant and neither the plaintiffs nor any other person has any kind of right or interest over the said road.

10. That the defendant filed an application for haddubastu of his property and haddubastu was done and the boundary stones were fixed and the plaintiff No.2 damaged and destroyed the boundary stone fixed by the

revenue authorities and the defendant has filed a case with the concerned departments in respect of the same and the copies of the documents filed by the plaintiffs indicate that the plaintiff No.2 has shown the road which runs in Sy. No. 103 as a public road for the purpose of his layout but it runs to defendant's own property. Further that some of the plaintiffs had attempted to knock off the properties belonging to the Peeta during the period of the earlier Swamiji when he was suffering from ill-health and their intention was not successful due to the reigning Swamiji and therefore they have spread fake, malicious scandalous, defamatory and derogatory statements against the defendant and have threatened him and among these grounds prays for the application to be dismissed.

11. Head Sri. Vidwath Gowda, the learned advocate appearing on behalf of the applicants (plaintiffs). Heard the learned advocate Sri. K.P. Suresh Kumar, appearing on behalf of the opponent (defendant) and I have perused the records carefully and meticulously.

12. The following points arise for my consideration.

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and hardship in case of refusal of temporary injunction?
4. What order?

13. My answer to the aforesaid points are as follows:

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

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

REASONS

14. **Point No.1 to 3:-**

Point No.1 to 3 are inter connected hence they are taken up together to avoid repetition. It is the main contention of the plaintiffs that the defendant without any right, title or interest has interfered with the plaintiffs use of the suit schedule public road and attempted to damage it.

The suit schedule road is described to be a public road measuring 30 feet with a length of about 3200 feet existing between the Jwalamalini High School and Tirthankara Fuel Station.

15. In support of contention that the suit schedule road is a 'public road', the plaintiffs have filed several documents among them is the layout plan approved by the Chief Officer, Pattana Panchayath and Joint Director of Town and Country Planning authority.

16. On careful perusal of the same, it shows a layout and adjacent to the same on the western side is a Pattana Panchayath road measuring 7.50 meters and thereafter lies Sy. No. 41.

17. The plaintiff has also produced the several RTCs in respect of Sy. No. 33/1, 46, 29, 35 and others to show the presence of property of at the Jalluhanklu, Menasur Village. The important document that has to be considered is the endorsement issued by the Pattana Panchayath with respect to the existence of the public road. In the said

endorsement dated 28.07.2020 it is mentioned that in the ward No.8, in the year 2018-19, a concrete drain was constructed for the purpose of flow of rain water and in the work order annexed to the endorsement, the title of the work is stated in Kannada as 'ಜ್ವಾಲಾಮಾಲಿನಿ ಪ್ರೌಢಶಾಲೆ ಮತ್ತು ಮಹಾವೀರ ಬಡಾವಣೆ ಮಧ್ಯದಲ್ಲಿ ಮುಖ್ಯ ರಸ್ತೆಯಿಂದ ಮಳೆ ನೀರು ಹರಿದುಹೋಗಲು ರಸ್ತೆಯ ಬಲಭಾಗ ಮತ್ತು ಎಡಭಾಗದಲ್ಲಿ ಕಾಂಕ್ರೀಟ್ ಚರಂಡಿ ನಿರ್ಮಾಣದ ಮುಂದುವರಿದ ಕಾಮಗಾರಿ' Therefore it clearly shows that it is not construction of a road which is alluded to in the work order, but the construction of the drainage for the flow of rain water from the N. R. Pura – Koppa main road and the same can be emphasized by again reiterating the words 'ಜ್ವಾಲಾಮಾಲಿನಿ ಪ್ರೌಢಶಾಲೆ ಮತ್ತು ಮಹಾವೀರ ಬಡಾವಣೆ ಮಧ್ಯದಲ್ಲಿ ಮುಖ್ಯ ರಸ್ತೆಯಿಂದ ಮಳೆ ನೀರು ಹರಿದುಹೋಗಲು ರಸ್ತೆಯ ಬಲಭಾಗ ಮತ್ತು ಎಡಭಾಗದಲ್ಲಿ ಕಾಂಕ್ರೀಟ್ ಚರಂಡಿ ನಿರ್ಮಾಣದ ಮುಂದುವರಿದ ಕಾಮಗಾರಿ' and an amount of Rs.9,94, 926/- is shown to be expended for the drain work.

18. The copy of a letter issued by the N. R. Pura Police requesting the Chief Officer, Town Panchayath to provide details regarding the survey number in which the road is situated and whether the said road is a Government road and in whose property it is situated and to whom the said road is belongs to and to provide any available documents has been produced by the plaintiffs.

In reply to the aforesaid enquiry the letter issued by the Chief Officer, Town Panchayath has also been produced and the same reveals that on examination of the Town map, a road comes within the ward No.8 of Town Panchayath and goes up to Jalluhanklu and that it is a public road, but however the survey number in which the road is situated and the other details could be accessed from the Taluk office. The maps annexed to the reply is not clear and does not seem to indicate the existence of any road.

19. One of the documents produced by the plaintiff is a letter issued by the Assistant Executive Engineer, Panchayath Raj Engineering Sub Division and it mentions that they have used tar and gravel and have laid down a road by side of the Jwalamalini School till Jallahanklu.

20. The defendant on the other hand has categorically argued that the plaintiffs have not come before the court with clean hands and the scheduled road is not a public road, but is defendant's private road provided for use by the school authorities and the school children.

21. The defendant has also produced several documents in support of his contention and has produced the sketch pertaining the Sy. No. 103 and 33 of Menasuru Village and also the new podhi sketch of Sy. No. 103. It is vehemently argued that no Government land is in existence between the property of the defendant which is Sy. No. 103 and Sy. No. 33 which belongs to the plaintiff No.2. If there is no Government land then there would be no existence of Government road.

22. The defendant has also produced RTC in respect of Sy. No. 103 which shows only 1 gunta is kharab land and the said kharab land is not shown to be a road kharab. The defendant has produced the copy of the tax demand register extract for the period 2017-18 which shows that an extent 4 acres 1 gunta in Sy. No. 103 has been converted for educational purpose and entire land of 1,75,329 sq.m. containing a hostel and a school is now standing in the name of the defendant.

23. The defendant has also produced RTC for the period 1983-84 to 1987-88 which shows that Sy. No. 103 in which an extent measuring 4 acres 1 gunta is standing in

the name of Swamiji Jain Bastimutt. From this document, it is pertinent to note that the said Sy. No.103 has been in existence from 83-84. But however the layout sketch produced by the plaintiff does not reveal the existence of Sy. No. 103, but it only shows Sy. No. 41. It was not denied by the plaintiffs that the Jwalamalini Higher Primary School is situated in Sy. No.103. Therefore there is some doubt as to the road and as to where it is situated.

24. Moreover the plaintiffs have not produced any valid documents to show that the road as described in the plaint schedule is indeed a public road. There are no documents to show how the said public road came to be in existence whether the said road was formed in the Government land or in any kharab land or whether any land was acquired by the Government for the purpose of constructing the road or how the said road came to be in existence.

25. The plaintiff could have easily obtained documents in respect of the said public road if it had been in existence from 'time immemorial' as alleged by the plaintiffs, but however except for a few documents

pertaining to the present year, no other document has been produced to show the prior existence of the said road.

26. On careful perusal of the sketch produced by the defendant, it shows no public land is in existence between his property in Sy. No. 103 and the property of the plaintiff No.2 in Sy. No. 33. The sale deed dated 14.05.1998 and 27.06.2001 shows the existence of Panchayath road on the west. But however there are no documents to show the existence of the said Panchayath road even with the Panchayath itself when referred to the letter dated 01.07.2020 which clearly reveals that the Chief Officer has stated that the documents might be with the Taluk office.

27. It is argued by the defendant that merely because the Government has improved a road by laying tar does not warrant the conclusion that the said road is a public road and that it also has to be borne in mind that due to the Bastimutt Kshetra being a place of religious importance and visited by throngs of devotees through out the year, it would compel the Government under several

schemes for the improvement of the same and taking advantage of this the plaintiffs cannot seek a relief that a private road is a public road. The said argument has some merit with respect to the point that the Kshetra being religious place may be improved by the Government.

28. Considering all the materials on record it is clear that even though the plaintiffs have produced documents showing the existence of the road, which is not disputed by the defendant, they have failed to show that the said road is a public road. Though the plaintiffs have alleged that the said road is being used by the general public from times immemorial, there are no valid documents to show the existence of the public road as alleged by the plaintiffs.

29. The court cannot hold a mini trial at this stage and without proper evidence both oral and documentary evidence it would be impossible for the court come to a conclusion whether the said road is a public road or not and any finding at this stage would be improper and unjust and it can only be decided by a full fledged trail and which cannot be held now.

30. Therefore, plaintiffs have failed to make out a prima facie case against the defendants and when a prima facie case itself is not made out, question of balance of convenience and irreparable loss or hardship does not arise for consideration.

31. **Point No.4:-**

In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

Application filed by the plaintiff under order XXXIX Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the stenographer typed by her through computer, corrected by me and then pronounced in the open court on this day the 12th day of November 2020).

Sd/-
(Priyanka B.)
Civil Judge & J.M.F.C.,
N.R.Pura.