

KACM500002862021



Presented on : 23-06-2021

Registered on : 23-06-2021

Decided on : --

Duration :

**IN THE COURT OF THE CIVIL JUDGE AND
J.M.F.C., NARASIMHARAJAPURA**

PRESENT: Sri. Harisha K.M., B.A., LL.B.,
CIVIL JUDGE & JMFC, N.R. PURA

Dated this the 24th day of February 2022

O.S. No.47/2021

Plaintiff: H. N. Rajappa S/o Late Sri.
Nagappagowda, Aged about 55 years,
R/o Koosgal, Sarya Village, N. R. Pura
Taluk.

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

V/S

Defendants: 1. Sri. Manoj S/o Sri. Chandrashekhar
K.M., Aged about 30 years, R/o
Kalkuli, Kochavalli Village, Thekkur
Post, Sringeri Taluk.

2. Sri. Parameshwara S/o
Shankaraishgowda, Aged about 58
years, Koosgal, Sarya Village, N. R.
Pura Taluk.

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

ORDERS ON I.A.NO.I

I.A.No.I under order 39 Rule 1 and 2 CPC filed by the plaintiff seeking for relief of temporary injunction for restraining the defendant, their men, servants or any body claiming through him from interfering with the peaceful possession and enjoyment of the suit A, B and C schedule properties either by causing any obstruction to the free movements of the plaintiff's in the E schedule or blocking the E schedule road at AB point till disposal of the suit.

2. The said application is annexed with the affidavit of the plaintiff, wherein it is stated that, the plaintiff is the absolute owner in possession and enjoyment of the property suit A to C schedule properties and having acquired the same under the

registered partition deed dated 16.07.2018 took place between the joint family members. The khata of the suit A to C schedule properties has been changed in the name of plaintiff on the basis of partition. Since the date of partition, the plaintiff is in possession, cultivation and enjoyment and fenced all around the suit A to C schedule properties. The defendant having property to an extent of 20 guntas land in Sy. No. 10/1 of Sarya Village, which is the D schedule properties.

3. The plaintiff further stated that, there is a road about 15 feet width and nearly 60 meters in length which runs in the schedule 'D' property. Which is 'E' schedule property. The plaintiff and his ancestors of title of 'A' schedule properties were using the 'E' schedule road from time of immemorial to reach the schedule A to C schedule properties. Except the 'E' schedule road, there is no any alternative road to reach A to C schedule properties. The plaintiff and the other parties of the above said partition deed are using the schedule E road for day to day movements,

for transportation of manure, raw-materials and also agricultural produces. The plaintiff and his ancestors were using the said road since from the date of purchase of the schedule A to C properties without any interruption from any body. Hence, plaintiff having right of easement of necessity and right of prescription over the E schedule property, because it is the only way to reach his properties.

4. The plaintiff further stated that, defendant No.1 is the owner of the land in Sy. No.10/1 of Sarya Village and defendant No.2 is the intending purchaser of the above said property, are now trying to the block 'E' schedule road at AB point shown in the rough sketch, with intention to cause the obstruction to plaintiff from using the E schedule road. On 19.06.2021 the defendant and their labourers came to near the suit B schedule road and tried to grab the E schedule road at the AB point and thereby tried to cause inconvenience to the plaintiff. However, the plaintiff has resist the illegal acts of the defendants.

But who will return the defendants have put a threat to plaintiff that, at any cost they will definitely block the E schedule road at AB point. But the plaintiff is in poor and law abiding citizen, cannot resist the illegal acts of the defendant in future without the assistance of this court. Hence, it is prayed to this application.

5. On the other hand defendants have appeared before the court through their counsel. The defendants have filed written statement and filed memo stating that the written statement treated as objections to the I.A. No.1. Wherein it is denied the entire plaint averments except the para No.5. It is contending that, the D schedule property is the absolute property of the 1st defendant, it is in possession, cultivation and enjoyment, none other than the 1st defendant has got any kind of right in all over the suit schedule D property. No one as any kind of right either of road or of any kind in or over the 'D' schedule property. No part of the 'D' schedule property ever has used for any kind of movements

other than the owner of the D schedule property. The plaintiff and other share holders of their family properties have got their own road arrangement for movement and reservation made for the said purpose in their own land connecting the village road, without disclosing this arrangement witnessed in their own document, they have come with a false story with an intention to harass the defendants and to bargain with them to usurp of the D schedule property from the defendants. Hence it is prayed to dismissed the application.

6. On the basis of above pleadings, the following points arise for my consideration:

1. Whether the plaintiff has made out prima facie case?
2. Whether the plaintiff has made out that balance of convenience lies in his favour?
3. Whether the plaintiff has made out that if temporary injunction is not granted, he will be put into great loss or hardship?

4. What order?

7. Heard arguments. Perused the materials on record, on that basis my findings 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:

REASONS

8. **Point No.1:-**

The plaintiff has averred that, he is the owner in possession of the A to C schedule properties. The E schedule road existing in the Sy. No.10/1 property of defendant No.1, which is the D schedule property. The plaintiff and his ancestors use the E schedule road to reach A to C schedule properties. Except the E schedule road there is no alternative road to reach the schedule A to C schedule properties of plaintiff. But

the defendants have tried to block the E schedule road.

9. On the other hand the defendant has contended that, there is no existence in E schedule road. The schedule D property is the absolute property of defendant No.1. It is in possession and cultivation. No one was any kind of right either or road or any kind in or over the D schedule property. The plaintiff and other share holders of their family properties have got their own right arrangements and for movement reservation made for the said purpose in their own land connecting the village road.

10. The plaintiff has produced certified copy of registered Partition Deed dated 31.05.1971 entered between the father of the plaintiff Sri. Nagappa Gowda and his brothers. Copy of Partition Deed dated 16.07.2018, have entered between legal heirs of Late Nagappa Gowda in respect of suit A to C schedule properties and other properties. Copy of 11E sketch.

Copy of genealogical tree. Copy of M.R. extract. Copy of 3 RTC extracts for the year 2020-21 in respect of A to C schedule properties. Copy of 5 RTC extracts for the year 2020-21 in respect of Sy.No 4/5 , Sy.No.4/9, Sy.No.4/7, Sy.No.4/3, Sy.No.4/4. Copy of 2 M.R. extracts. Copy of Tippani in respect of Sy.No.4. Copy of Atlas in respect of re Sy.No.4. Registered Sale deed dated 21.12.2018 executed by Ethiraj S/o B.M. Venkategowda in favour of defendant No.1 in respect of D schedule property and other properties. Copy of 3 RTC extracts for the year 2020-21 in respect of Sy.No.10/2, Sy.No.10/3 wherein the name of defendant No.1 is appearing as possessor and cultivator. Copy of Tippani in respect of Sy.No.9. RTC in respect of Sy.No.9. Copy of Tippani in respect of Sy.No.10. Atlas in respect of re Sy.No.10. Copy of akaarbund. Rough sketch prepared by the plaintiff. Copy of Index. Copy of M.R. extracts.

11. The plaintiff has produced the Two Registered Partition deed dated 31.05.1971 and

16.07.2018 to show that 7 acre 01 gunta land in Sy No:4 of Sarya village has fallen to share of his father Nagappa Gowda . Thereafter, the suit schedule A to C schedule properties has fallen to the share of plaintiff in the partition. The plaintiff has produced the RTC and the Mutation register extract in respect of the suit A to C schedule properties.

12. The plaintiff has not produced any documents to show that, the road is existence in the D schedule property and the defendants are trying to block the same. But the plaintiff rely upon the photos. Only on the basis of photos the court could not come to the conclusion at this stage that, the road is existence in the D schedule property, without full fledge of trail on both sides . Hence, the plaintiff's case is doubtful at this stage. Accordingly, the plaintiff has not made out prima facie stage at this stage. No doubt, a prima facie case is only opinion of the Court that there exists a serious dispute, which requires to be decided on merits after recording of

evidence, a doubtful case is not regarded as a prima facie case. In this regard, in the decision reported in ***ILR 1992 Kar 2905 (R.Dillip Kumar vs S.Ramu)***, it is observed as follows:

"There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or is more dangerous in a doubtful case, than the issuing an injunction. It is the strong harm of equity, that never ought to be extended unless to cases of great injury, where Courts of Law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases, or new ones not coming within well-established principles; for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress, it being the act of a Court, not of the party who prays for it. It will be refused till the Courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act. In such a case the Court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in very clear cases; otherwise, instead of becoming an

instrument to promote the public as well as private welfare, it may become a means of an extensive and perhaps an irreparable injustice.

13. Considering the pleading put forth by the parties, the right claimed by the plaintiff is not prima facie established, at this stage. Whether the said right is available to the plaintiff has to be established by the plaintiff by adducing cogent evidence hence, the right claimed by the plaintiff being doubtful at this stage, a prima facie case is not made out. Under the circumstances, I hold that at this stage, the plaintiff has not made out prima facie case in his favour. Accordingly, I answer points no.1 in the negative.

14. **Points No.2 and 3:-**

Since these two points are inter-related, they are taken up together for consideration to avoid repetition. In view of the findings on Point No.1, these points became purely academic. In this regard the decision reported in *AIR 2010 SC 296 (Kashi Math Vs., Srimad Sudhindra Thirtha Swamy and another)* is

relevant. Fact remains that, having failed to prove the Point No.1, the Plaintiff has consequently failed to prove these two points as well. Hence, these points
Hence, these points are answered in the Negative.

15. **Point No.4 :-**

In view of the findings on the above points, the following order is passed :-

ORDER

I.A.No.I filed by the plaintiff under O.39 R.1 and 2 seeking for the relief of temporary injunction, is hereby dismissed.

Considering the peculiar circumstances of the case, costs are made easy.

(Dictated to the Stenographer directly on computer, typed by her, then corrected by me and pronounced in the open court on this the 24th day of February 2022)

Sd/-
(Harisha K.M.)
Civil Judge & JMFC,
N. R. Pura.