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O.S. No. 32/2025

IN THE COURT OF THE CIVIL JUDGE & JMFC., N.R.PURA
(ITINERARY COURT)

Present : Sri. Jeethu R.S., B.A.L.,LL.M.,
Civil Judge & JMFC., N.R. Pura.

Dated : This the 4th day of August 2026.

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Plaintiff/s : Krishnamurthy, S/o Dharme Gowda,
Aged about 69 years,
Agriculturist, Kelakoppa,
Mudubagilu Post,
N.R. Pura Taluk-577134,
Chikkamagalur District.
(Represented by Sri. K.P. Suresh Kumar/Karthikeyan S,
Adv.,)

V/S

Defendant/s : Mohan, S/o Thimme Gowda,
Aged about 39 years,
R/o Kelakoppa, Varkate village,
Mudubagilu post,
N.R. Pura Taluk-577134,
Chikkamagalur District.
(Represented by Sri. S.S. Santhosh Kumar, Adv.,)

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**ORDER ON I.A. NO.1 FILED UNDER ORDER 39 RULE 1
AND 2 (PROVISO 3) R/W SECTION 151 OF CPC**

The plaintiff/applicant has filed the above application under Order 39 Rule 1 and 2 (Proviso 3) R/W Section 151 of CPC seeking to restrain the defendant or any one claiming under him from closing or putting up any obstructions or obstacles across the suit schedule 'C' road pending disposal of the suit.

2. In the affidavit annexed to the above application, it is stated that the plaintiff has filed this suit against the defendant for declaration and permanent injunction in respect of the suit schedule properties. It is further stated that the suit schedule properties were fallen to the share of the plaintiff's father Dharme Gowda as per the registered partition deed, dated 03.01.1986. The said Late. Dharme Gowda during his lifetime executed Will

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bearing registration No. 7/85-86 bequeathing his properties in favour of his children which were acquired by him vide the said aforementioned partition deed. After the death of Late. Dharme Gowda the Will was acted upon. The plaintiff is in possession of the properties which are bequeathed in his favour. It is further stated that there exists a road as described at plaint 'C' schedule at Sy.No.102 measuring 10 feet width and 360 feet length which was used by the family members. The said road commences from Varkate Main Road at Kelakoppa and runs over the Sy.No.102/5, 102/1, 106, 105 and 127. The land in Sy.No.106 belongs to the defendant and the land in Sy.No.105 belongs to the plaintiff. After the partition also the said road has been continuously being used for their ingress and egress over their respective properties. Such being the case, the defendant has now fixed a fence over the suit 'C' schedule road and thereby it has caused obstruction for

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the plaintiff to his ingress and egress over his properties. As such, he has instituted the above suit and application.

3. After the institution of the suit and service of summons, the defendant has appeared before the court and has filed the written statement. Further, the counsel for defendant has filed the adoption memo seeking to adopt the written statement as objections to the above I.A. In the written statement, the defendant has denied all the plaint averments and contented that a road has been existed in Sy. No. 102 of Varkate village, Kasaba Hobli, Narasimharajapura Taluk since time immemorial and the defendant has been using the said road to his ingress and egress over his agricultural land. The said road is reflected in the village map and it is also developed by the Honnekodige Gram Panchayath and not only the defendant but also other public have been using it since long time. The fact is that the plaintiff is



having ill will against the defendant and is obstructing the defendant from using the said road with the malicious intention of causing unnecessary trouble. The plaintiff has no right or authority to do so. The plaintiff has filed this suit with the malicious intention of harassing the defendant without cause and in order to gain undue advantage, by concealing the facts and explaining false facts to the court. The plaintiff with an intention to get wrongful gain has filed this suit on false grounds by concealing the real facts. Therefore, prays to dismiss the above application.

4. On the basis of the above pleadings, the following points arise for consideration are:

- 1) Whether the plaintiff has made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the irreparable loss and injury caused to the plaintiff if the temporary injunction is not

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granted?

4) What order?

5. My findings on the above points are as under:

Point No. 1 : In the affirmative.

Point No. 2 : In the affirmative.

Point No. 3 : In the affirmative.

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

REASONS

6. **Point No.1**:- I have already narrated the facts stated in the affidavit annexed to the application by the plaintiff. It is the case of the plaintiff that the suit schedule properties were fallen to the share of the plaintiff's father Dharme Gowda as per the registered partition deed, dated 03.01.1986. The said Late. Dharme Gowda during his lifetime executed Will bearing registration No. 7/85-86 bequeathing his properties in favour of his children which were acquired by him vide the said aforementioned partition deed.

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After the death of Late. Dharme Gowda the Will was acted upon. The plaintiff is in possession of the properties bequeathed in his favour. It is further contended that there exists 'C' schedule road at Sy.No.102 measuring 10 feet width and 360 ft length which was used by the family members. The said road commences from Varkate Main Road at Kelakoppa and runs over the Sy.No.102/5, 102/1, 106, 105 and 127. The land in Sy.No.106 belongs to the defendant and the land in Sy.No.105 belongs to the plaintiff. After the partition also the said road has been continuously being used for their ingress and egress over their respective properties.

7. Per contra the defendant has contented that an alternative road is in existence to reach the plaintiff's property and also other public. It is further contended that the said alternative road has been existed in Sy. No. 102 of Varkate village, Kasaba Hobli, Narasimharajapura Taluk since time immemorial. The said road

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is reflected in the village map and it is also developed by the Honnekodige Gram Panchayath.

8. To substantiate the contention of the plaintiff, the plaintiff has filed the RTC and the photographs along with a CD at this juncture. Per-contra the defendant has not produced any documents in his favour at this juncture. This court has carefully perused the documents submitted by the plaintiff wherein in the photographs it appears that there is an existence of a mud road i.e., said to be 'C' schedule road. The defendant though has contended regarding the existence of an alternative road said to be a public road developed and maintained by the Village Panchayath has not produced any document in support of the said contention at this juncture. The above suit is instituted for the relief of declaration of easementary right i.e., easement by way of necessity with the consequential relief. Prima-facie at this juncture the plaintiff is able to show the existence of the road/'C'



schedule road which is the only available road for his ingress and egress over his properties. Accordingly, the plaintiff is able to show the prima facie case at this juncture to have the fruits of injunction. Accordingly, the **Point No. 1 is answered in the Affirmative.**

9. **Point No.2 and 3:** Since both these points are interlinked, they are taken co-jointly for discussion to avoid the repetition. The plaintiff has made out the prima facie case as the plaintiff has sought for not to interfere with the plaintiff's usage of 'C' schedule road by the defendant, which passes through the defendant's property, which is said to be the only available road for his ingress and egress over his respective properties. As such, the balance of convenience lies in favour of the plaintiff when compared to the defendant. Further, if the order of injunction is not granted with respect to restraining the defendant from causing obstruction towards the usage of the disputed road by the

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plaintiff, definitely it would cause irreparable loss and hardship to the plaintiff. As such, the **Point No.2 and 3 are answered in the Affirmative.**

10. **Point No.4:-** For the above reason this Court proceeds to pass the following;

ORDER :

I.A.No.I filed by the plaintiff/applicant against the defendant under order 39 Rule 1 & 2 (Proviso 3) R/w Section 151 of C.P.C., is hereby allowed.

Consequently, the defendant or any one claiming under him is hereby restrained from closing or putting up any obstructions or obstacles in or over or across the suit schedule 'C' road, till disposal of the suit.

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Parties to bear their own costs.

(Dictation given to the Stenographer directly on system, typed by her, then corrected and then pronounced by me in the open court on this the 4th day of August, 2026)

Sd/-xxx 4/8/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R.Pura.