



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 16th day of September, 2022

OS No.10/2021

BETWEEN:

Sri.K.A.Satheesha and another

...Plaintiffs.

V/s.

AND:

Smt. Jayamma and others

...Defendants.

IA.NO.III

BETWEEN:

Sri.K.A.Satheesha and another

...Applicants/Plaintiffs.

V/s.

AND:

Smt. Jayamma and others

...Opponents/Defendants.

**ORDER ON IA NO.III**

Learned counsel for the Applicants/Plaintiffs filed I.A No.III under Section 151 of CPC to direct PSI, Hariharapura to enforce the T.I. Order granted by the Family Judge of Family Court at Chikkamagaluru to enable the applicant, to remove the mud get dumped by the opponents over the road branching of Sringeri-Kavadi Main Road leading to the agricultural lands of the applicants from Government Sy.Nos.137/223 of Bilagadde village from their residential house situated on the other side through JCB further preventing the opponents from causing abstractions in the course of removal of the mud dumped over the mamool road as observed and ordered by the appellate court so as to reach the hiduvali lands bearing Sy.No.222/157/P of Bilagadde village (Karuvane).

2. This application is supported with the affidavit of plaintiffs that, they have filed the suit for the relief of



declaration and permanent injunction concerning suit schedule property. Because the defendants have prevented them from using the road by dumping mud from their residence to reach suit lands. They had to request the court to grant T.I order in their favour to remove the mud illegally get dumped by the defendants by/ through hired JCB, this court did not grant them T.I. order. Consequently, they had preferred a miscellaneous appeal before the District Court which later came to be transferred to the Family Judge of Family Court, Chikkamagaluru which has been pleased to allow the appeal and granted T.I. order as prayed for.

3. The appellant court has specifically granted T.I. order, against the defendants, restraining them from causing obstructions during the course of removing the mud got dumped by the defendants. They have approached local police more than one time to render them their



assistance but police have not rendered them the help on the ground there is no direction by the court to render police help. Consequently the defendants in utter disregard the order of the appellate court not allowing them to remove the excess mud got dumped by them, thereby, indirectly nullifying the T.I. order.

4. They are advised to submit to the court that the Hon'ble High Court of Karnataka, Bengaluru has ruled in the latest decision reported in 2001 KCCR (\$) page 2787 following the earlier decision reported in ILR 1996 KAR 1271 to the effect that the court has got power to enforce the T.I. order through concerned police. There is no other way out to them to get the road cleared through JCB. The defendants are powerful local residents whereas they are living away from their lands. Hence prayed to allow the application.



5. The application is opposed by defendants by filing the written objection contending that, the interim application filed by the applicant is not maintainable on facts or either by law. The written-statement filed by this defendant may be read as part of this objection to avoid the repetition of facts. The defendants are well aware of the facts and order of Hon'ble Court. Moreover the plaintiff was not in possession of lands as stated in the plaint.

6. Affidavit contents are not supported with valid documents or evidence. There is no fresh response for violation of court order. Moreover the plaintiff is powerful person backed by political support. Hence, he is trying to dispossess the defendants from their possession in Sy.No.222 by misleading the real facts before the Hon'ble court. The local police already colluded with the plaintiff and instigated the plaintiff to file this application.



7. Already Tahasildar with the help of local police visited the disputed spot and drawn the mahazar about the actual fact. Said mahazar was drawn in the presence of plaintiff. The Tahasildar visited the spot on 27.07.2022 with the presence of police as per the order of Hon'ble District Court/ Family Court Chikkamagaluru. The Hon'ble court may pleased to call entire record from Tahasildar Koppa. Otherwise, Court may permit the defendants to summon the same for better adjudication of the matter. The road is in existence which is leading to the House of defendant as well as Manjunath S/o Duggappa Gowda. Said Road is not at all connecting to the properties of plaintiff. These facts are very much clear as per the mahazars drawn by Revenue Authorities in the presence of police as well as Survey Authorities. Plaintiff is known for pre-mell activities and he is intend to disturb the possession of defendants in Sy.No.222 of Bilagadde village and also intend to dispossess the areca, Banana and other



agricultural lands which is planted by defendants.

8. If JCB is allowed the plaintiff will definitely damage the existing boundary fence in and around the lands of defendants in Sy.No.222. Plaintiff filed IA No.4 with affidavit. Said affidavit of the plaintiff is self explanatory about the visit to Tahasildar as well as police. The defendants reserving the right to file the objection to the said application. The road in Sy.No.137 as well as 223 of Bilagadde village which is leading from the Bilagadde Kavali road is ultimately leading to the house of defendants as well as above mentioned Manjunath. The road is motorable mud vehicle road. So, clearance through the JCB is not at all required. Road is kept open in Sy.No.137 and 223. but the intention of the plaintiff is to destroy the fence in the boundary of Sy.No.222 which is in the possession of these defendants. The rough sketch filed along with the written-statement shall be considered. The



plaintiff intention is to form a new road in Sy.No.222. On these grounds prays to dismiss the IA application with heavy costs

9. Perused IA, objection, annexed affidavit and other material on record. Heard both respective counsels. Learned counsel for plaintiff filed a memo to furnish decision rendered in **2021 (4) KCCR 2987** (Sri.Krishnappa Vs. Sri.Mallesappa). After hearing the arguments and on perusal of the case papers the points that arise for consideration are as hereunder:

POINTS

1. Whether the Applicant/ plaintiff has made out sufficient grounds to allow the application?

2. What order ?

10. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following:

**REASONS**

11. **Point No.1:** Present suit filed by the plaintiff for the relief of declaration and injunction. After filing the suit plaintiff filed I.A.No.I U/o 39 R 1 and 2 of CPC. Which was dismissed by this court. Against which the plaintiff preferred an appeal which was allowed by the Hon'ble Family Judge of Family court at Chikkamagaluru.

12. It is the contention of the applicant/plaintiff that the defendants have prevented from using the road by dumping mud from their residence to reach suit lands. Plaintiff filed I.A.No. U/o 39 R1 and 2 of CPC, which was dismissed by this court, the challenged the order passed by this court. Hon'ble Appellate court, set aside the order passed by this court. Hon'ble court in its order has discussed that, The plaintiffs produced the documents relating to the proceedings initiated before the Tahsildar and Assistant Commissioner and the order passed by



them. when the right of road is claimed it cannot be dealt with so casually, because, if the road is existing and there is obstruction certainly it is going to cause the irreparable loss to the person who claims the right of approach.

13. Admittedly, the lands where in the plaintiff claiming the disputed road belongs to the Government. The defendants admitted the existence of the road and their contention is that the road exists only upto their house. This is very difficult to accept. It is not the case of the defendant that the area in their possession being claimed as road. The revenue authorities are not disputing the existence of the road. the order of the Tahasildar dated 23.09.2021 and perusal of the order and the survey sketch discloses the existence of road since time immemorial and order was passed restraining the defendants herein from causing the interference. The mahazar dated 05.02.2022 discloses that dispute regarding the road is solved. The



oether revenue records and the mahazar clearly discloses the existence of the road claimed by the plaintiffs and their right to use the road. Though the documents discloses that dispute relating to the road is solved, the defendants not submitted that hey are not going to cause obstruction to the use of the disputed road by the plaintiffs.

14. The appellant court set aside the order of this court and allowed the appeal. And defendants / respondents are restrained from causing obstructions to the plaintiffs to use the mud road of width of about 12 feet and the length of 200 meters running in Government Sy.No.137 and 223 of Bailagadde Village, Hariharapura Hobli, Koppa Taluk.

15. Hence now the plaintiff filed this present application seeking police protection on the ground that, They have approached local police more than one time to render them their assistance but police have not rendered



them the help on the ground there is no direction by the court to render police help. Consequently the defendants in utter disregard the order of the appellate court not allowing them to remove the excess mud got dumped by them, thereby, indirectly nullifying the T.I. order.

16. Learned counsel for plaintiff relied on decision reported in 2001 KCCR (\$) page 2787. In a decisions **2021 (4) KCCR 2987** (Sri.Krishnappa Vs. Sri.Mallesappa)

Held, - “ CIVIL PROCEDURE
CODE, 1908-Order 39, Rules 1 and 2
– Order 39, Rule 2(A)-Grant of
Temporary Injunction-Non compliance
with order-Injunctive relief-Direction
to police-Relied on Popanna Vs.
Nagachari, ILR 1966 KAR 1271.”

17. Hence it is already held that revenue records and the mahazar clearly discloses the existence of the road claimed by the plaintiffs and their right to use the road. And defendants are restrained from causing obstructions to the plaintiffs to use the mud road. Hence now the



defendants are not allowing the plaintiffs to use the road, hence if the I.A is not allowed the purpose of passing the order not served. Hence I.A filed by plaintiff deserves to allowed. Accordingly, in view of the above discussions **point No.1 answered in the affirmative.**

18. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

I.A.No.III filed by the applicant/plaintiffs under Section 151 of CPC is hereby allowed.

The P.S.I Hariharapura is hereby directed to enforce the T.I.Order dated 16.06.2022 passed by the Hon'ble Prl Judge, Family Court At Chikkamagaluru in M.A.No.11/2022.

Office to sent the copy of the order to PSI Hariharapura PS.

(Dictated to the Stenographer directly on the computer, same is corrected by me and then pronounced in the open Court on this the 16th day of September, 2022)

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.