

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.,
AT : TARIKERE.**

Present: S.M.Arutagi, B.Com., LL.B. (Spl.),
Addl. Civil Judge & JMFC, Tarikere.

OS. No. 28/2016.

Dated: 1st Day of March, 2016.

Plaintiff : N.B.Shanthappa

(Reptd. By :Sri.H.S.P/B.T.K., - Adv.)

-V/s.-

Defendants : M.Malleshappa

(Reptd. By :Sri. B.P.R., – Adv.)

Applicant/:

Plaintiff

In IA.No.1

N.B.Shanthappa

-V/s.-

Opponent:

Defendant

In IA.No.1

M.Malleshappa

ORDERS ON IA.NO-1

The plaintiff being an applicant has filed interim application No.1 U/O.39 Rule 1 and 2 CPC seeking temporary injunction against the defendant restraining him from disturbing the use of B schedule road to reach his suit schedule A property by digging the

pit in the B schedule road or to discharging the bore well water to the B schedule road and closing the B schedule road by putting the stones, mud, fence etc., till the disposal of this suit.

2. The brief facts averred in the affidavit annexed to the application that:-

He is the absolute owner of the suit schedule landed property bearing Sy.No.92/2b measuring 1 acre 18 guntas and the Sy.No.92/3 measuring 34 guntas, both lands situated at Anuvanahalli village Shivani Hobli, Tarikere Taluk. The properties are shown in the suit schedule bearing Sy.No.92/3 measuring in total 3 acre 12 guntas and the said property is ancestral property of family of himself and the defendant. The defendant is the son of his senior uncle. Further it is stated that, he and defendant and their family members have got divided their family properties among themselves before the Panchayathdar on 23/3/1985. Further it is stated that, as per said Jubane, partition the property measuring in total 2 acres 12 guntas i.e., 1 acre 18 guntas and 34 guntas in Sy.No.92/2b and Sy.No.92/3 has been allotted his share. And also property measuring 16 guntas in Sy.No.92/2b and Sy.No.92/3 measuring 24 guntas in total 1 acre towards western side of his property has been allotted to the share of defendant.

3. Further it is stated that, in pursuance of the above said Jubane, partition the khatha have been changed to the name of himself and defendant. Further it is stated that, towards western side of property of defendant, there is a Kanabaghatte-Naranapura road is situated and he has to reach his property through said main road on the property of the defendant. And also stated that, he has been using the property measuring 12 feet in width and 200 feet in length to reach his property. Further it is stated that, after partition, the defendants on the instigation of bad elements, disturbed his peaceful pass through the said 12X400 feet space to reach his property. And also stated that, thereafter he had convened the panchayath and in the said panchayath, he has agreed to leave the property measuring 12X200 feet in his property i.e., nearly 1 guntas to the defendant. In turn, the defendant has also left 12X200 feet towards southern side of his property to enable him to reach his property.

4. Further it is stated that, he is in possession over the property i.e., 2 acres 11 guntas in Sy.No.92/2B and 92/3 shown in he suit schedule A property. Further the road measuring 12X200 feet i.e., 1 guntas which is situated in the property of the defendant bearing Sy.No.92/3 which is shown in the suit schedule B

property. Further it is stated that, the defendant is in possession over the 1acre including 1 guntas left by him after excluding 1 guntas which has been left as road to reach A schedule property of the plaintiff. Further it is stated that, the defendant has no manner of right or interest over the suit schedule B road and he has no manner of right to disturb his peaceful pass through the B schedule road to reach A schedule property from main road.

5. Further it is stated that, since from several years, the defendant has not disturbed him in using the suit schedule B road as a right of easement of necessity and prescriptive right. Further it is also stated that, except the suit schedule B road, he has no any other accessible road to reach his A schedule property. This being facts, the defendant on the instigation of some bad elements, who are not in good terms with him instigated the defendant and on the instigation of the bad elements and in order to give unnecessary trouble to him and to have wrongful gain is making hurried attempt to disturb the peaceful use of B schedule road to reach the A schedule property. And also stated that, he is trying to discharge the water from bore well and to the B schedule road and also tried to dig the deep trench in the B schedule road to cause disturbance to him to reach his A schedule property through the motar cycle

and to carry the agricultural implements and carrying mud, manure from tractor etc.

6. Further it is stated that, the defendant is also trying to stock the mud in the B schedule road and the act of the defendant is illegal and he has no manner of right to do so, the illegal act. Further it is stated that, he had tried to resist the illegal acts of the defendant, but the defendant is very powerful having men and money and political influence behind his back and not prevents the illegal act of the defendant. He has filed complaint before Ajjampura police station on 6/1/2006 and the police have called upon the defendant and warned the defendant. Further it is stated that, the defendant has agreed and consented before the police that, he will not disturb to him to use of B schedule road and also the police have directed him to approach Civil court as the dispute arisen between parties is civil in nature. Therefore, taking undue advantage of non-taking action by the Ajjampura police, the defendant is making hurried attempt to continue his previous illegal act by disturbing peaceful use of B schedule road. Further it is also stated that, the act of the defendant is illegal and further he finds very difficulty to resist the illegal act of the defendant and also the defendant has denied his right to use of B schedule road to

reach his A schedule property. Further it is stated that, except B schedule road, he has no other alternative road to reach his property. Further it is stated that, he has requested the defendant not to close the B schedule road and not to disturb him peaceful use of B schedule road. But the defendant has abused him in filthy language and act of the defendant is illegal and he has no manner of right to do so. Therefore, he has got every right to use of B schedule pathway as prescriptive right and easement of necessity. Further it is stated that, he has made out prima facie case and balance of convenience lies in his favour, if the temporary injunction is not granted in his favour, he will be put to great and irreparable loss. Hence, sought for allow the application.

7. On the other hand, on service of summons to the defendant, defendant is appeared through his counsel and filed the written statement contending that, all the allegation made in the plaint are false, frivolous and vexatious and not maintainable under law and facts. Further it is denied that, the plaintiff is absolute owner of the landed property bearing Sy.No.92/2B have measuring 1 acre 18 guntas and Sy.No.92/3 measuring 34 guntas property situated at Anuvanahalli village and also contended that, the plaintiff has sought for the relief in respect of illusionary

properties. Further he admitted the relationship of plaintiff and defendant and also admitted that, the property bearing Sy.No.92/3 measuring 3 acres 4 guntas and the said property is ancestral property of family of the plaintiff and defendant.

8. Further it is admitted that, the plaintiff and defendant and family members have divided their family property between themselves before Panchayathdar dated 23/3/1985. And also admitted that, in the said oral partition, the property totally measuring 2 acres 12 guntas i.e., 1 acre 18 guntas in Sy.No.92/2B and in Sy.No.92/3 measuring 34 guntas were allotted to the share of the plaintiff. And also admitted that, the property measuring 16 guntas in Sy.No.92/2B and 92/3 measuring 24 guntas in total 1 acre towards western side of property of plaintiff were allotted to the share of defendant. Further it is admitted that, in pursuance of the said oral partition deed dated 23/3/1985, the khatha has been mutated into the name of the respective sharers.

9. Further it is also admitted that, towards western side of property of the defendant, there is a Kanabaghatee-Naranapura road is situated. But it is denied that, the plaintiff has to reach his property through the said main road on the property of the

defendant and also denied that, the plaintiff has been using the property measuring 12 feet in width and 200 feet in left to reach his property. Further it is denied that, after partition, the defendant on the instigation of some persons has disturbed the peaceful pass through the plaintiff through the said 12X200 feet to reach his property. And also contended that, since there is no property narrated in the suit schedule B, it is an illusion created by the plaintiff. Further it is denied that, the plaintiff has convened the panchayath and in the said panchayath, the plaintiff has agreed to leave the property measuring 12X200 feet in his property nearly 1 guntas to the defendant. Also contended that, in turn defendant has left 12X200 feet towards the southern side of his property to enable the plaintiff to reach his A schedule property.

10. Further it is denied that, plaintiff is in possession over the property about 2 acres 11 guntas in Sy.No.92/2B and 92/3 which is shown in the A schedule property. The plaintiff only to file this suit creates the B schedule road shown by him. Therefore, the defendant denied the existence of B schedule property. Further it is denied that, defendant is in possession over the 1 acre including 1 guntas left by plaintiff after excluding 1 guntas which has been left as road to reach the A schedule property of the plaintiff. Further it

is contended that, the defendant has put coconut samplings around his property during the raining season of last year. Further it is contended that, the B schedule property is an illusionary property as narrated by the plaintiff and question that the defendant has no manner of right, interest over the B schedule road does not arise. And also contended that, since there is no B schedule property question that, plaintiff having access through the B schedule road to reach his A schedule property from main road does not arise.

11. Further it is denied that, the defendant has not disturbed the plaintiff in using the B schedule road and right of easement of necessity and prescriptive right does not arise. Further there is no cause of action to file this suit arose to the plaintiff and the cause of action shown in the suit is engineered for the sake of filing this suit and also contended that, this suit is bad for non joinder of necessary parties. Therefore, on these grounds, said for dismissal of application.

12. Heard the arguments.

13. On the basis of the above pleadings, the following points are arisen for my consideration are:-

- 1. Whether the applicant/plaintiff has made out a prima-facie case in order to seek temporary injunction against the defendants?**
- 2. Whether the applicant/plaintiff has proves that the balance of convenience lies in his favour?**
- 3. To whom irreparable injury or loss caused in allowing or rejecting this application?**
- 4. What order?**

14. My findings on the above points are as follows:-

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In favour of plaintiff.

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

REASONS

15. Points No.1 & 2 :-These points are inter linked with each other, to avoid repetition of facts, these are taken up together for common discussion.

16. It is the case of the plaintiff that, he has filed the suit against the defendant for the relief of declaration that, he has

having right of easement and prescriptive right over the B schedule road to use the same to reach his A schedule property and also consequential relief of permanent injunction against the defendant and other relief's.

17. To the aid of main relief, the plaintiff has filed the present application seeking temporary injunction against the defendant restraining him, his men, agents representative or anybody acting on his behalf from disturbing the use of B schedule road and to reach his A schedule property by digging the pit in the B schedule road or to discharging the bore well water to the B schedule road and closing the B schedule road by putting the stone fence etc. It is main contention taken by the plaintiff that, he is in peaceful possession and enjoyment of suit schedule A property and he is absolute owner of the suit schedule A property.

18. On perusal of the both side pleadings and documents produced before this court, it is undisputed that, the defendant is son of senior uncle of plaintiff. Further it is undisputed fact that, the landed property bearing Sy.No.92/3 totally measuring 3 acres 12 guntas is the ancestral property of the plaintiff and defendant. Further it is also undisputed fact that, the plaintiff and defendant

family members have divided their family properties between themselves before Panchayathdar on 23/3/1985. Further it is undisputed fact that, as per the said oral partition, the properties totally 2 acres 12 guntas i.e., 1 acre 18 guntas in Sy.No.92/2B and in Sy.No.92/3 measuring 34 guntas were allotted to the share of the plaintiff. And also admitted fact that, the property measuring 16 guntas in Sy.No.92/2B and in Sy.No.92/3 measuring 34 guntas in total 1 acre towards the western side of property of the plaintiff were fell to the share of defendant. Further it is undisputed fact that, as per the said oral partition, dated 23/3/1985 the names of the respective parties are mutated in the RTC extract and also mutation was certified. Further it is undisputed fact that, towards the western side of property of the defendant, there is a Kanabaghatta -Naranapura road is situated.

19. Except these facts, the defendant totally denied the case of the plaintiff, to show the right over the suit schedule B property, the plaintiff has produced some documents relating to the suit schedule A and B property. The plaintiff specifically stated that, he has to reach his property through the said main road on the property of the defendant and he has been using the said road measuring 12 feet in width and 200 feet in length to reach his

property. Further it is specifically stated that, after the partition, the defendant on the provocation of bad elements, he is disturbed the peaceful pass through the plaintiff in the said 12 feet X 200 feet space to reach his property. Thereafter the plaintiff took up the matter before Panchayath and the plaintiff is agreed to leave the property measuring 12X200 feet in his property i.e., nearly about 1 guntas to the defendant. And in turn, the defendant has left 12X200 feet towards southern side of his property to enabling plaintiff to reach his property. Therefore the plaintiff is in possession over the property i.e. 2 acre, 11 guntas shown in the suit schedule A property. The defendant is in possession over the 1 acre including 1 guntas left by the plaintiff after excluding 1 guntas which has been left as road to reach A schedule property of the plaintiff.

20. Further it is specifically stated that, the defendant has no manner of right, title or interest over the B schedule road and he has no manner of right to disturb the peaceful pass through the B schedule road from the main road i.e., Kanabaghatee-Naranapuratar road. Further it is specifically stated that, since from several years, the defendant has not disturbed the plaintiff by using the said B schedule road as the right of easement and necessity and

prescriptive right. Further it is also specifically stated that, except the said B schedule road, he has no other alternative road to access his property i.e., shown in A schedule property. But the defendant with instigation of some persons, who are not in good terms to the plaintiff, in order to give unnecessary trouble to the plaintiff and to wrongful gain, he is making hurried to attempt to disturb peaceful possession of suit schedule B road to reach the A schedule property. And also trying to discharging water from the bore well to the B schedule road and also tried to dig the tip trench in the B schedule road to cause to disturbance to the plaintiff to reach his A schedule property through the motor cycle and to carry the agricultural implement and carrying mud, manure from the tractors etc., and also trying to stock the mud in the B schedule road.

21. Further it is specifically stated that, the act of the defendant is illegal and he has no manner of right to do so. Therefore the defendant is powerful person with men and money and also he has got political powers using its political powers, he giving unnecessary trouble to the plaintiff. Therefore, in this regard, he has lodged a complaint before Ajjampura police and thereafter the Ajjampura police has called upon the defendant and warned to

the defendant not to disturb the peaceful use of B schedule road. And directed the plaintiff to approach civil court as disputes arisen between the parties is purely civil in nature and therefore he sought for allow the application.

22. On the other hand, the counsel for defendant vehemently argued that, except the relationship and oral partition taken place between the parties and remaining allegation made in the plaints are totally denied and also entry of the name of the parties also is not disputed. But the counsel for the defendant strongly objected the existence of B schedule road. Further there is no B schedule road situated as shown in the suit schedule B property. Further the defendant is in possession of 1 acre and he is planted coconut sampling around the property during raining season of last year. Therefore, the plaintiff has not come before this court with clean hands and clear intention. Hence, the plaintiff is not entitled for any relief sought in the application.

23. Further during the course of argument, the counsel for defendant vehemently argued that, if a person claims right of easement of necessity or prescriptive right, he has to fulfill ingredients of the Sec.15 of Indian Easement Act 1982. Further it is

argued that, the plaintiff has not fulfill the ingredients shown in the Easement Act. Hence he cannot claim the right of easement of necessity and prescriptive right. Therefore, the property shown in the suit schedule B is not in existence and only to file this suit, the plaintiff has created the suit schedule B property. Hence sought for dismissal of application.

24. On perusal of the both parties pleadings and documents, the relationship of parties is not disputed and also oral partition took place between the plaintiff and defendant during the year 1985 is also not disputed. Further, the entry of name of the parties in pursuance to the oral partition is also not disputed. The defendant also disputes that, the plaintiff is not leave the 1 guntas, of property about 12X200 feet and in turn, the defendant has left 12X200 feet towards southern side of his property.

25. Therefore, on perusal of the both sides pleading, it is clear that, towards western side of property of defendant, there is a Kanabaghatee-Naranapura tar road situated. Further on looking into the documents produced by the plaintiff, it clearly goes to show that there is an existence of B schedule property. On looking into the photographs, it clearly reflects that, there is a road shown

in the suit schedule B property. But the defendant is obstructing the use of B schedule road by the plaintiff. Hence, whether there is an existence road shown in the suit schedule B property or not or plaintiff has got right of easement of necessity or prescriptive right or not, it comes to conclusion, after full fledged trial and hence this court cannot go into try mini trial regarding same. On perusal of documents placed by the plaintiff are clearly reveals that, he has made out prima facie case and balance of convenience tilt in his favour. Accordingly, I answer point No.1 and 2 in the Affirmative.

26. Point No.3:- As per the above said reasons, if the temporary injunction is not granted in favour of plaintiff, definitely the plaintiff will be put to great and irreparable loss or else if the temporary injunction is not issued in favour of plaintiff, definitely the defendant and their men, agents are obstructing the use of B schedule road. Accordingly, I answer point No.3 in favour of plaintiff.

27. Point No.4:- In view of the findings given on the above said point, I proceed to pass the following:-

ORDER

I.A.No.1 filed by plaintiff/applicant under order 39 Rule 1 and 2 CPC is hereby allowed. No order as to costs.

Temporary injunction is issued against the defendant, their men, agents, servants or anybody acting on their behalf from disturbing the use of B schedule road by the plaintiff to reach his suit schedule A property by digging the pit in the B schedule road or to discharge the bore well water to the B schedule road and closing the suit schedule B road by putting the stone, mud, fence etc., till the disposal of this suit.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the day of 1st March 2016.)

(S.M.ARUTAGI)
ADDL. CIVIL JUDGE AND
J.M.F.C, TARIKERE.