



C.R.P.67

Form No.9(Civil)
Title Sheet for
Judgments in Suits
(R.P.91)

Govt.of Karnataka

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

Present: Smt.Urmila.V. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 16th Day of April 2025

ORIGINAL SUIT NO.90/2024

PLAINTIFF/s :

T.B.Mallikarjunappa S/o late Basappa,
aged 72 years, Agriculturist, R/o
Timmapura village, Javoor Post, Shivani
Hobli, 577145, Ajjampura Taluk.

(Reptd. By : Sri C.S.Shivaprasad, Advocate.)

Vs.

DEFENDANT/s:

- 1) Onkarappa S/o Channappa, aged 68
years, Agriculturist,
- 2) Smt.Mallamma W/o Mallappa, aged 60
years, House maker,
- 3) Basavarajappa S/o Shivamurthappa,
aged 68 years, Agriculturist,
- 4) T.M.Onkarappa S/o Mallappa, aged 58
years, Agriculturist,
- 5) Smt.Sarojamma W/o Shivamurthappa,
aged 50 years, House maker,



6) T.N.Raghu S/o Nanjundappa, aged 42 years, Agriculturist,

All are R/o Timmapura village, Javoor Post, Shivani Hobli, 577145, Ajjampura Taluk.

(Defendants : Exparte)

Date of institution of Suit	07.03.2024		
Nature of the suit	Permanent injunction		
Date of commencement of recording of evidence	21.03.2025		
Date on which Judgment was Pronounced	16.04.2025		
Total duration	Year/s	Month/s	Day/s
	01	01	09

J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of permanent injunction restraining the defendants or their agents or their family persons or any authorized person on their behalf from interfering with plaintiff's peaceful possession and enjoyment of the suit 'A' schedule property, and for permanent injunction restraining



the defendants No.2 to 6 or their agents or their family persons or any authorized person on their behalf from interfering with plaintiff's right and enjoyment of using suit 'B' schedule property to reach 'A' schedule property for ingress and egress and also for permanent injunction restraining the defendants No.2 to 6 or their agents or their family persons or any authorized person on their behalf from closing, putting any straw heap, hay so as to close suit 'B' schedule property or its nature and keep the same as 12 feet road.

SCHEDULE PROPERTY

'A' SCHEDULE

Land bearing Sy.No.86/1 measuring 0.05 guntas, situated at Timmapura village, Shivani Hobli, Ajjampura Taluk, bounded on East by: land sold to defendant No.2 in Sy.No.86/1, West by: land of defendant No.1 in Sy.No.86/1, North by: land of plaintiff in Sy.No.86/2 and South by: Land of Channappa S/o Mallappa.

'B' SCHEDULE

Road left in northern side of land bearing Sy.No.86/1 measuring 12 feet width (north-south) approximate 122 feet (east-west) 285 links as per 11e sketch situated at



Timmapura village, Shivani Hobli, Ajjampura Taluk, bounded on East by: road to A.K.Colony and A.K.Colony, West by: land of Susheelamma W/o Parvatappa Sy.No.86/1, North by: land of plaintiff and others in Sy.No.86/2 and South by: Land of plaintiff and defendants in St,Bi,86/4.

2. It is the case of the plaintiff that :

The plaintiff is the permanent resident of Timmapura village and the suit schedule property is part of land in Sy.No.86/1 of Timmapura village. Out of the said land plaintiff had inherited/acquired 0-33 guntas of land and remaining land belonged to Smt.Susheelamma W/o late Parvatappa of Timmapura village. The land of plaintiff measuring 0-33 guntas is bounded on East by A.K.Colony, West by land of Smt.Susheelamma in Sy.No.86/1, North by land of T.B.Mallikarjuappa in Sy.No.86/2 and others and South by land of Channappa S/o Mallappa in Sy.No.85.

3. It is further submitted that Timmapura village is connected to main road which is no State High Way which is



called as Birur-Davanagere Road. The said road is situated towards West of land in Sy.No.86/1 and 86/2 and the bus stand is also formed and towards East of Sy.No.86/1 there is A.K. Colony and many villagers are residing in the said area. The villagers of Timmapura in order to have access for their day to day life, use and approach to village inhabitation, which is situated on north-east of Sy.No.86/2 have left road in the middle of Sy.No.86/2 which commences from Birur-Davanagere High Way and reaches village inhabitation. Therefore the land in Sy.No.86/1 is also very much opt for residential purpose and is very nearer to the main road, bus-stand and other community area namely A.K. Colony. It is further submitted that the road which passes in middle of Sy.No.86/2 runs from west to east and then takes turn to both north and south. The road towards north reaches village inhabitants and road runs towards south reaches A.K.Colony. In fact on eastern side of land of plaintiff in Sy.No.86/1



Government through Zilla Panchayat has formed concrete road which leads to A.K. Colony.

4. It is further submitted that the defendants No.1 to 5 are relatives and hails from same village. The defendants in order to have space/area for harvesting, storing hay, straw heap etc., and also in order to have residential house, persuaded plaintiff to part with land during 2006. Since the defendants intended to purchase land measuring around 0-05 guntas to 0-08 guntas and each of them have to approach their area to be purchased through road which runs on eastern side i.e., road runs to A.K. Colony. Therefore all the purchasers namely defendants No.1 to 5 agreed to leave 12 feet land on northern side of Sy.No.86/1 i.e., out of the property purchased by them in Sy.No.86/1. Further plaintiff also wanted to keep land and accordingly it was mutually agreed between plaintiff and defendants No.1 to 5 to leave space of 12 feet on northern side of Sy.No.86/1. The both



plaintiff and defendants agreed to incorporate the area left on northern side measuring 12 feet in the sale deed executed by plaintiff. It is further submitted that after all the pre-purchase talks between plaintiff and defendants No.1 to 5, they have applied for getting 11E sketch since bits of land was agreed to be sold. The 11E sketch is also included and appended to sale deed. It is further submitted that in the 11E sketch obtained, land of Smt.Susheelamma in Sy.No.86/1 which is on western side 0-33 guntas is shown Block I. Further purchasers namely defendants including property retained by plaintiff was given block numbers and the same is shown in separate chart.

5. It is further submitted that after getting the 11E sketch the plaintiff has sold the properties as measured above under separate sale deeds and in some deeds son of plaintiff namely T.M.Shadakshari is also included as executants. As agreed by parties in all the sale deeds of defendants No.1 to 5,



there is recital embodied as 12 feet road is left for road on northern side and kannada verbatim is ಈ ದಿನ ನಾವು ನಿಮಗೆ ಕ್ರಯ ಕೊಡುತ್ತಿರುವ ತಿಮ್ಮಾಪುರ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ ೮೬/೧ ರ ಜಮೀನಿನ ಉತ್ತರ ಭಾಗದಲ್ಲಿ ೧೨ ಅಡಿ ಅಗಲದ ದಾರಿಯನ್ನು ಬಿಟ್ಟಿರುತ್ತೆ. ಸದರಿ ದಾರಿಯಲ್ಲಿ ಈ ದಿನ ನಾವು ಕ್ರಯಕ್ಕೆ ಕೊಡುತ್ತಿರುವ ಎಲ್ಲಾ ಕ್ರಯದಾರರುಗಳು ಓಡಾಡಲು ಸಮಾಂತರ ಹಕ್ಕುಳ್ಳವರಾಗಿರುತ್ತಾರೆ.

It is further submitted that the property retained by plaintiff is the suit 'A' schedule and property en-marked as 12 feet road is suit 'B; schedule property and both plaintiff and defendants including their heirs and subsequent holders are entitled to make use of suit 'B' schedule property for their ingress and egress. The plaintiff in order to reach 'A' schedule property has to pass through 'B' schedule to plaintiff which was left as road. Since 'B' schedule to plaintiff is left as road, no person is authorized to close or make improvement or put up any permanent or semi-permanent structure in the area.

6. It is further submitted that, after the sale deed the plaintiff and defendants No.1 to 5 have started enjoying the



properties by leaving road on northern-side as stated above i.e., 'B' schedule property. Many of the defendants including plaintiff started using the lands in Sy.No 86/1 for harvesting or storing hay and straw and since 2006. It is further submitted that the defendant No.5 Smt.Sarojamma could not keep the property so purchased and as such along with sons Girish and Harish sold the property to defendant No.6 under registered sale deed dated 05.05.2012. The defendant No.6 is also permanent resident of Timmapura village. Even in the sale deed of defendant No.6 who had purchased the property from defendant No.5 and her children, it is categorically mentioned that defendant No.5 had acquired the property under sale deed dated 15.12.2006, the defendant-6 being resident of Timmapura village knew very well about road left on north of the property purchased by Smt.Sarojamma and remaining defendants are making use of suit property for their ingress and egress. Though defendant No.6 had full knowledge, intentionally did not include the said term in the



sale deed dated 05.05.2012. However the defendant No.6 also had not made any objections or interference to others till recently. It is further submitted that the defendant No.6 during January 2024 slowly started troubling and meddling with plaintiff and other defendants No.1 to 4 and started restraining plaintiff from making use of suit schedule property. However, since defendants No.1 to 4 and other villagers instructed defendant No.6 not to meddle or trouble, defendant No.6 kept quite. Since there was threat about making use of suit schedule road for ingress and egress, the plaintiff took advice and accordingly obtained certified copies of the sale deed on abundant caution. However on 28.02.2024 defendant No.6 tried to close the suit property by putting "bavane/storing straw" in the beginning of suit schedule property so as to close road left for ingress and egress and the same was restrained by plaintiff and other defendants No.1 to 4. Since defendant No.6 started troubling, the defendants No.2 to 4 also started making grouse and



openly started asserting that they will not leave road and allow plaintiff to make use of suit schedule property. Having no other option, the plaintiff has knocked the doors of the Court.

7. It is further submitted that the plaintiff is aged and having little deformity in walking. Further due to age though made futile attempt in asking jurisdictional police to assist the same resulted in vain. The jurisdictional police orally intimated plaintiff to approach Civil Court since the dispute is of civil nature. Though the sale deeds as referred clearly revealed the fact of retaining property of 12 feet namely 'B' schedule property as road and police had ample powers to restrain defendant No.6 from making any closure or putting up straw, did not take any steps and probably lured and influence by defendant No.6 who is powerful person with money, men and political influence. Hence, this suit.



8. In response to service of suit summons, the defendants No.1 to 6 have not appeared before the court and as such, they were placed *exparte*.

9. In order to prove the case of the plaintiff, the plaintiff himself examined as PW.1 and got marked 11 documents as Ex.P.1 to 11 and closed his side.

10. Heard arguments of plaintiff and perused the materials on record.

11. The points that arise for my determination are :

- 1) Whether the plaintiff proves that, he is in peaceful possession and enjoyment of the suit schedule property as on the date of the suit?
- 2) Whether the plaintiff proves the alleged interference caused by the defendants over the suit schedule property?
- 3) Whether the plaintiff is entitle for the relief as sought for?
- 4) What order or decree?



12. My findings to the above points are as follows ☺

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

13. **POINT NO.1 TO 3** : These points are inter related with each other. Hence, in order to avoid repetition of facts and findings, these points are taken up together for common discussion. The plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect of suit schedule property. I have already narrated in brief what is the case of the plaintiff is.

14. In order to prove the same, the plaintiff has filed examination in chief by way of affidavit and examined himself as PW.1. The PW.1 in his chief examination affidavit, he has reiterated the plaint pleadings. In order to substantiate his



case, the plaintiff has produced as many as 11 documents which are came to be marked as Ex.P.1 to 11. Ex.P.1 is the online copy of registered sale deed dated 15.12.2006 executed by the plaintiff and his son namely T.M.Shadakshari in favour of defendant No.1 and Form No.65(B). Ex.P.2 is the online copy of registered sale deed dated 15.12.2006 executed by the plaintiff and his son namely T.M.Shadakshari in favour of defendant No.5 and Form No.65(B). Ex.P.3 is the online copy of registered sale deed dated 05.05.2012 executed by the defendant No.5 and her children in favour of defendant No.6 and Form No.65(B). Ex.P.4 is the RTC extract for the year 2021-22 in respect of Sy.No.86/1. Ex.P.5 is the online copy of registered sale deed dated 15.11.2006 executed by the plaintiff and his son namely T.M.Shadakshari in favour of defendant No.4 and Form No.65(B). Ex.P.6 is the online copy of registered sale deed dated 15.12.2006 executed by the plaintiff and his son namely T.M.Shadakshari in favour of



defendant No.3 and Form No.65(B). Ex.P.7 to 10 are the photographs and Ex.P.11 is the C.D.

15. On meticulous reading of oral and documentary evidence adduced by both parties, admittedly this is a suit for the relief of permanent injunction in respect of suit schedule property. It is well settled law that, in a suit for permanent injunction, the burden of proving the possession and interference over the suit schedule property is always lies upon the plaintiff. The plaintiff has to prove his case independently by producing cogent and credible evidence. In order to prove the possession of the plaintiff over the suit schedule property, the plaintiff has mainly relied upon the documentary evidence.

16. On perusal of the oral and documentary evidence adduced by the plaintiff, in the sale deeds Ex.P.1, 2, 5 and 6 executed by the plaintiff in favour of defendants No.1 to 5, it is clearly stated in that "ಈ ದಿನ ನಾವು ನಿಮಗೆ ಕ್ರಯ ಕೊಡುತ್ತಿರುವ ತಿಮ್ಮಾಪುರ



ಗ್ರಾಮದ ಸರ್ವೆ ನಂ ೮೬/೧ ರ ಜಮೀನಿನ ಉತ್ತರ ಭಾಗದಲ್ಲಿ ೧೨ ಅಡಿ ಅಗಲದ ದಾರಿಯನ್ನು ಬಿಟ್ಟಿರುತ್ತೆ. ಸದರಿ ದಾರಿಯಲ್ಲಿ ಈ ದಿನ ನಾವು ಕ್ರಯಕ್ಕೆ ಕೊಡುತ್ತಿರುವ ಎಲ್ಲಾ ಕ್ರಯದಾರರುಗಳು ಓಡಾಡಲು ಸಮಾಂತರ ಹಕ್ಕುಳ್ಳವರಾಗಿರುತ್ತಾರೆ." The plaintiff is claiming that 12 feet road is 'B' schedule property and also the said documents discloses that the plaintiff and defendants are co-owners of Sy.No.86/1. Further the plaintiff submits that the plaintiff and defendants No.1 to 5 have started enjoying 'B' schedule road for harvesting and other purpose. Further the plaintiff submits that the said road is 'B' schedule road and they are using the road as easement of right. But the defendants have not come forward to deny the same. Further the plaintiff submits that the defendant No.5 Smt.Sarojamma could not keep the property so purchased and as such, along with her sons namely Girish and Harish sold the property to defendant No.6 under registered sale deed. Though the defendant No.6 has full knowledge about the 'B' schedule road, intentionally did not include the said terms in the sale deed dated 05.05.2012 and defendant No.6



started troubling and meddling with plaintiff and other defendants No.1 to 4 and started restraining the plaintiff from making using of suit 'B' schedule property. It is very pertinent to note that, in response to service of summons, the defendants have not appeared before this court to deny the case of the plaintiff. Hence, the oral and documentary evidence adduced by the plaintiff is remained unchallenged and unrebutted. Hence, opinion of this court is that, the plaintiffs have proved that he has got right of way over the 'B' schedule road to reach his land by way of easement by grant and necessity.

17. At this juncture, I would like to refer Section 8 of Easement Act 1882. This section establishes that easement can be imposed by a party in accordance with their interest in the property and easement of grant can be created through express grant, clearly articulated the term in a deed or agreement and also allows for the imposition of easements by



anyone who can transfer their interest in the property, thus enabling the creation of easement through express grants. At this juncture, I would like to refer the judgment of Hon'ble Supreme Court of India passed in Civil Appeal No.7/2010 dated 05.01.2010 in the case of **Sree Swayam Prakash Ashramam and another Vs. G.Anandavally Amma and others reported in 2010(2) SCC 689**, wherein the Hon'ble Supreme Court held that, an easement by grant is a right that one person has over the land of another person i.e., created by a formal agreement between the parties. On careful perusal of said decision, the said decision is applicable to the present case on hand.

18. Further on perusal of Annexure-1 and 1A filed along with the plaint, it discloses that the plaintiff is residing in block -3 of sketch shown in both annexures, to reach his land, the plaintiff has to cross block-5, 6 and 7. At this



juncture, I would like to refer Section 13(e) of Easement Act 1882, which states that :

13. Easements of necessity and quasi-easements ;

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement;

19. Easement of necessity arises only where by a transfer, bequest or partition, a single tenement is divided into two or more tenements and any of these is to be situated that it cannot be enjoyed at all without certain privilege on another such tenement. In such a case, implied grant or reservation will be presumed in favour of the person holding the former tenement. Therefore, the plaintiff is entitle for the relief of permanent injunction as prayed in the plaint. Hence, I answer Point No.1 to 3 in the Affirmative.

20. **POINT NO.4** : In view of my above findings, I proceed to pass the following:-

**ORDER**

The suit of the plaintiff is hereby decreed with cost.

The defendants are hereby permanently restrained from interfering with plaintiff's peaceful possession and enjoyment of the suit 'A' schedule property and the defendants No.2 to 6 are hereby restrained from interfering with plaintiff's right and enjoyment of using suit 'B' schedule property to reach 'A' schedule property for ingress and egress.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 16th day of April 2025.)

sd/-

(URMILA.V)
ADDL. CIVIL JUDGE AND
J.M.F.C, TARIKERE.

ANNEXURE

List of witness examined for the plaintiff:-

PW.1 : Shashank

List of documents exhibited for the plaintiff:-

Ex.P.1 : Online copy of registered sale deed dated 15.12.2006 and Form No.65(B)



- Ex.P.2 : Online copy of registered sale deed dated
15.12.2006 and Form No.65(B)
- Ex.P.3 : Online copy of registered sale deed dated
05.05.2012 and Form No.65(B)
- Ex.P.4 : RTC extract
- Ex.P.5 : Online copy of registered sale deed dated
15.11.2006 and Form No.65(B)
- Ex.P.6 : Online copy of registered sale deed dated
15.12.2006 and Form No.65(B)
- Ex.P.7 to 10 : Photographs
- Ex.P.11 : C.D.

List of witnesses examined for the defendants:-

- Nil -

List of documents exhibited for the defendants:-

- Nil -

sd/-

**ADDL. CIVIL JUDGE AND
J.M.F.C, TARIKERE.**