

IN THE COURT OF PRL. CIVIL JUDGE, & JMFC., AT
CHAMARAJANAGARA

Dated this 30th day of October 2024

: **PRESENT:**

SRI. VENKATESHA.N., B.A.LL.B, LL.M.,
PRL. CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA

O.S.268/2023

PLAINTIFF/s : Puttamadappa

V/s

DEFENDANT/s: Mahadevappa & Others

I.A.No.I

APPLICANT/s : Puttamadappa,
S/o Late Madappa,
Aged about 60 years,
R/at Lakshmipura Village,
Haradanahalli Hobli,
Chamarajanagar Taluk.

(By Sri. V.S., Advocate)

V/s

OPPONENTS/s: 1. Mahadevappa,
S/o Late Honnappa,
Aged about 55 years,

2. Malligamma,
W/o Mahadevappa,
Aged about 48 years,

3. Mahadevaswamy,

S/o Mahadevappa,
Aged about 28 years,
All are R/at,
Lakshmipura Village,
Haradanahalli Hobli,
Chamarajanagar Taluk.

(Sri. G.S.K., Advocate)

i.	<i>Provision under which the application is filed</i>	<i>XXXIX Rule 1 & 2 of CPC</i>
ii.	<i>Relief sought for</i>	<i>Temporary Injunction</i>
iii.	<i>The date on which the application is filed</i>	<i>04.09.2023</i>
iv.	<i>Number of the application</i>	<i>IA.No. I</i>
v.	<i>The date on which the objections are filed by different opponents</i>	<i>22.01.2024</i>
vi.	<i>The date on which the orders were passed on the said application</i>	<i>30.10.2024</i>

ORDER ON I.A.I

The Applicant/Plaintiff has filed I.A.No.1 under Order 39 Rule 1 & 2 of CPC., seeking Temporary injunction order restraining the Defendants, their agents or supporters or anybody acting on behalf of them as not to cause any kind of obstructions or interference to Plaintiff to make use 'B' schedule Road till disposal of the suit.

2. In the Affidavit annexed to IA it is stated that, the Plaintiff averments may be read as part and parcel of this affidavit. It is the case of the Plaintiff that, the suit schedule property i.e., **Item No.A:** The land bearing Sy.No.445 measuring 2 acre 10 guntas, out of 963 acres and an house existed in the same, situated at Lakshmipura Village, Haradanahalli Hobli, Chamarajanagar. Bounded on East by the land of Mallappa, West by land belongs to Plaintiff, South by the land belongs to Defendants and North by 'B' schedule Road, is the absolute property of Plaintiff. The **Item No.B** schedule Road is public Road. The Plaintiff is using the Item No.B Road to reach 'A' schedule property, running north to south from main road to 'A' schedule land, situated at Lakshmipura Village, Haradanahalli Hobli, Chamarajanagar, bounded on East by land of Devamma, West by Residential houses, South by 'A' schedule property and other residential houses and North by Main Road.

3. The Plaintiff is using the 'B' schedule Road to transport the agricultural products. The Defendants are obstructing the Plaintiff to use the 'B' schedule Road. The Plaintiff has made out a prima-facie case. The balance of convenience is also lies in favour Plaintiff. If the Temporary Injunction order is not granted, it will cause irreparable loss and injury to the Plaintiff. Hence prays to allow the IA.

4. The Defendants have filed Objection to the said IA. The Defendants denies all the allegations made by the Plaintiff. According to the Defendants in Sy.No.445 comprises total 963 acres belongs to Government. The Government has granted lands in the said survey number to several persons. The said survey number has not been made durasth. Hence boundaries cannot be identified. The Plaintiff only to harass the Defendants has filed this suit. The Plaintiff also filed another suit in OS.No.318/2021 against the Defendants in respect of same property. Hence prays to dismiss the application.

5. Heard both side arguments.

6. The following points arise for my consideration:

1. Whether the Plaintiff has got prim-facie case to grant TI Order ?

2. Whether the balance of convenience lies in favour of Plaintiff ?

3. Whether the Plaintiff will be put to irreparable loss and injury, if the order of T.I. is not granted?

4. What order?

7. My answers to the above points are as follows:

Point No.1 : in the **NEGATIVE**

Point No.2 : in the **NEGATIVE**

Point No.3 : in the **NEGATIVE**

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

REASONS

8. Point No.1 to 3 :- The facts involved in Point No.1 to 3 are same. Hence they are taken up together for common discussion to avoid repetition.

The Applicant/Plaintiff has filed this suit against the Defendants for the relief of Permanent Injunction in respect of 'B' schedule Road. The Plaintiff has produced RTC, copy of

Assessment Register and Photographs which prima facie proves that, the Plaintiff is in possession of 'A' schedule property. The Defendants also admit the possession of Plaintiff in respect of 'A' schedule property. According to the Defendants there is no road. At this stage the Plaintiff has not produced any material to show that, the 'B' schedule Road is in existence. The Plaintiff has not stated the measurement of 'B' schedule Road. In a suit for relief of Injunction in respect of Road Plaintiff has to give the exact measurement of the Road. Hence the Plaintiff has not made out prima-facie case. Admittedly the Defendants are also have properties in the same survey number. Hence the balance of convenience not lies in favour of Plaintiff. At this stage if the temporary injunction order is granted and the Defendants are restrained by way of Temporary Injunction, it will cause irreparable loss and hardship to the Defendants. On the other hand the Plaintiff has not produced any material to show that 'B' schedule road is in existence. Hence it will not cause any

irreparable loss and injury to the Plaintiff. Hence **Point No.1 to 3** are answered in **NEGATIVE**.

9. Point No.4:- For the aforesaid reason and discussion, I proceed to pass the following: -

O R D E R

**I.A.No.1 filed by the Plaintiff/
Applicant under Order 39 Rule 1 & 2
of CPC is hereby dismissed.**

Parties to bear their own costs.

(Dictated to the Stenographer on computer and computerized by her, corrected by me and then pronounced in the open court on this the **30th day of October 2024.**)

(VENKATESHA.N)
PRL. CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA