

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC., AT GUNDLUPETE**

**PRESENT: Sri. Deepu M.T, B.A.L., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet.**

Dated this the 25th day of SEPTEMBER, 2025

OS No:07/2022

Plaintiff : Somappa
Aged about 60 years
S/o Late. Shivabasappa
R/at: Doddahundi Village
Beguru Hobli, Gundlupete Taluk.

**[By Sri. PSG, Advocate]
V/s**

Defendants : 1. Tandavamurthy
Aged about 60 years
S/o Late. Gurumallappa

2. Nanjundaswamy
Aged about 58 years
S/o Late. Gurumallappa

3. Gurumurthy
Aged about 55 years
S/o Late. Chikkannappa
R/at: Doddahundi Village
Beguru Hobli, Gundlupete Taluk.

**[By Sri. HSP, Advocate for D1 & D2]
[D3 : Exparte]**

Parties to I.A No.V and VI

Applicant : Somappa
- Plaintiff

V/s

Opponent : Tandavamurthy and Others
- Defendants

Case stage: Arguments

ORDERS ON I.A.NO.V AND VI

The plaintiff has filed IA No.V U/s 151 of Code of Civil Procedure praying to reopen the stage to lead further evidence of plaintiff and IA No.VI U/o 16 Rule 1 and 2 of Code of Civil Procedure praying permission to file witness list along with list of witnesses.

2. In the annexed affidavit to the IA No.V and VI, the plaintiff has sworn that, the plaintiff has filed this suit for the relief of easementary right over the schedule property. Due to ill-health of the plaintiff, the plaintiff had not filed witness list in this suit as the plaintiff unable to meet his Advocate and give information regarding the witnesses. The present case is posted for reply arguments of plaintiff. Hence, there

is no malafide intention to file these applications. Hence, it is just and necessary to reopen the stage to lead further plaintiff's evidence and permit the plaintiff to file list of witnesses in the interest of justice and equity. Accordingly, on all these grounds prayed to allow the applications.

3. On the other hand, the defendants have resisted these applications by filing common objection to the said applications stating that, the applications filed by the plaintiff are not maintainable either in law or on facts and liable to be dismissed. It is further submitted that, the reasons assigned by the plaintiff in the annexed affidavits are not bonafide reasons and there is no valid reason stated in the affidavits. On 13.06.2025, the case was posted for arguments of plaintiff and adjourned to 19.06.2025 and at said point of time, the plaintiff has taken five adjournments to argue the matter. On 16.07.2025, the plaintiff submitted his arguments and on 22.07.2025, the defendants have submitted their arguments and case was posted for reply arguments on 28.07.2025. At said point of time, the plaintiff has file these applications. But, inspite of providing sufficient opportunities, the

plaintiff has not utilized the said adjournments. The plaintiff has not approached this Court with clean hands. Hence, the applications filed by the plaintiff is not maintainable. Accordingly, on all these grounds prayed to dismiss the applications.

4. Heard arguments of Learned Counsel for plaintiff and defendants and perused the materials available on record.

5. The following points arise for consideration of this Court :

- 1.** Whether the plaintiff has made out grounds to allow the IA No.V U/s 151 of Code of Civil Procedure?
- 2.** Whether the plaintiff has made out grounds to allow the IA No.VI U/o 16 Rule 1 and 2 of Code of Civil Procedure?
- 3.** What order?

6. Findings of this Court on the above points are as hereunder:

Point No.1	:	In the affirmative
Point No.2	:	In the affirmative
Point No.3	:	As per final order, for the following :

REASONS

7. Point No.1 and 2 : Since these points are interlinked with each other they are taken up together for common discussion to avoid repetition of facts and discussion.

8. On perusal of records, it depicts that, the plaintiff has filed this suit for the relief of declaration of easementary right and permanent injunction against the defendants. Through the instant applications, the plaintiff has sought for reopen the stage to lead further plaintiff evidence and seeking permission to file witness list. In the annexed affidavits to the applications, the plaintiff has stated that, due to ill-health, he could not meet his Advocate and give information regarding the plaintiff further evidence and witness list. For the said bonafide reason, the plaintiff had not filed these applications in the earlier stage. Therefore, sought for allow the applications. On the other hand the defendants have resisted these applications contending that, inspite of providing sufficient adjournments, the plaintiff had not filed these applications and hence, the plaintiff has not approached this Court with clean hands. Accordingly, prayed to dismiss the applications.

9. I have perused the pleadings, evidence and materials available on record, interim applications, annexed affidavits, objections, arguments of learned counsel for plaintiff and defendants. This is a suit for declaration of easementary right and permanent injunction against the defendants. The plaintiff wants to reopen the stage to lead the plaintiff further evidence and furnished witness list to lead their evidence. The same has been resisted by the defendants. On perusal of records, it appears that on 22.07.2025, this Court has recasted issue No.1 and proving of said issue burden casted upon the plaintiff and at the said point of time, both counsels submitted no additional evidence on recasted issue. But, in the very next date of hearing i.e., on 28.07.2025, the plaintiff has filed these applications for seeking reopen the case and permitting to file witness list. Therefore, the plaintiff has not delayed to lead his further evidence and immediately, in the next hearing date of framing recasted issue No.1, the plaintiff has filed these applications. Therefore, the objections of defendants is unsustainable. When the Court was posted the case for additional evidence on the recasted issue, the plaintiff submitted as no additional evidence

and very next hearing day, the plaintiff has filed these applications to lead plaintiff further evidence. It is settled principles law that, ample opportunities has to be given to the parties in the Civil suit to prove their case. Under such circumstances, the reasons ventilated by the plaintiff in the annexed affidavit as the plaintiff was not filed these applications due to ill-health is acceptable one. Accordingly, this Court is of the opinion that, the plaintiff has made out grounds to allow the applications. With these observations, this Court has answered **point No.1 and 2 in the Affirmative.**

10. Point No.3: In view of the reasons and discussions made on point No.1 and 2, this Court proceed to pass the following :

ORDER

The IA No.V U/s 151 of Code of Civil Procedure filed by the plaintiff is hereby allowed.

The IA No.VI U/o 16 Rule 1 and 2 of Code of Civil Procedure filed by the plaintiff is hereby allowed.

Accordingly, case is reopened for plaintiff further evidence and witnesses

list furnished by the plaintiff is taken on record.

In view of facts and circumstances of the case, no order as to cost.

[Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the **25th day of September, 2025**]

[DEEPU M.T]
Prl. Civil Judge & JMFC.,
Gundlupete.