

KACN320028882022



IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
AT KOLLEGALA

PRESENT : SRI. M. RANJITH KUMAR B.A,L' L.L.B.
I Addl. Civil Judge & JMFC., Kollegala.

Dated on this the 06th day of June 2026

OS. NO.255/2022

Plaintiff : 1. Sri. S. Ontigowda,
S/o late Sannappi Gowda,
Aged about 80 years,
R/at: Gajanuru Village,
Lokkanahalli Hobli, Hanuru Taluk,
Chamarajanagar District.

Versus

Defendants : 1. Smt. Mallamma,
W/o late Govindegowda,
Aged about 65 years,

2. Sri. Muniyappa,
S/o late Govindegowda,
Aged about 48 years,

3. Sri. Nagaraju,
S/o late Govindegowda,
Aged about 45 years,

4. Sri. Sannappa,
S/o late Govindgowda,
Aged about 35 years,
5. Sri. Govinda,
S/o late Govindgowda,
Aged about 30 years,
All are R/at: Gajanuru Village,
Lokkanahalli Hobli, Hanuru Taluk,
Chamarajanagar District.

INTERIM APPLICATION NO- III

Applicants/ : Sri. Nagaraju
(Defendant No.3)

Versus

Opponents/ : Sri. Ontigowda
(Plaintiff)

i.	Provision under which the application is filed	Under Order VII Rule 11 (a) & (d) of Code of Civil Procedure.
ii.	Relief sought for	Seeking rejection of the plaint
iii.	The date on which the application is filed	05.10.2023
iv.	Number of the application	III
v.	The date on which the objections are filed by the different opponents	03.11.2023
Vi.	The date on which the orders were passed on the said application	06.06.2026

ORDER ON IA No-III

1) The defendants have filed the present application under Order VII Rule 11(a) and (d) R/w Section 151 of Code of Civil Procedure, seeking rejection of the plaint. It is the contention of the defendants that, the plaintiff has filed the present suit for declaration of easementary rights over Schedule 'D' property but such a suit is barred under Section 4 of the Indian Easement Act, 1882 as the plaintiff has filed the present suit without any cause of action and the khata of the schedule property is jointly entered into the name of plaintiff and defendant no.1 and when the khata is entered in favour of plaintiff and defendant no.1 there is no locus standi for plaintiff to file a suit for declaration of easementary rights against his co-owner. Instead the plaintiff must have filed suit for partition but the present suit for the relief of declaration of easementary rights is not maintainable.

2) In counter to the application the plaintiff has filed his objection by contending that, the application filed by the

defendants is not maintainable and further denied all the averments made in the affidavit filed along with the application by the defendants and further contended that the defendants have filed a bald application without any proper reasons and he has also contended that, the plaintiff has filed present suit for declaration of permanent injunction only when defendants interfered with the usage of road by the defendants herein and such is the cause of action for filing the present suit. Accordingly, sought for dismissal of the application.

3) Heard learned counsel for defendants and plaintiffs, perused materials on record. Accordingly the following are the points for consideration of this case.

- 1. Whether present plaint deserves to be rejected under Order VII Rule 11 of Code of Civil Procedure?*
- 2. What Order?*

4) For the reasons stated below, this court answers the above points for consideration as hereunder:

Point No.1 – In the Negative.

Point No.2 – As per the final order.

REASONS**5) POINT NO.1 :**

It is the case of the plaintiff for declaration and permanent injunction wherein the plaintiff claiming to be owner of the Schedule 'B' property has filed present suit for declaration of his easementary right over the Schedule D property, which is alleged to be road carved out at the time of partition between himself and his brother Govindgowda, the husband of defendant no.1 and father of defendant no.2 to 5. It is the contention of the defendants in the present application that, the katha of the schedule property is jointly entered in the name of plaintiff and defendant no.1 as such they are the joint owners of the suit schedule properties and when the plaintiffs and defendants are the joint owners, the plaintiff cannot seek declaration of easementary rights against a joint owner. Instead, he must have filed suit for partition.

6) On perusal of the materials on record, it could be observed that, the plaintiff in his plaint paragraphs number 6 and 7 has specifically pleaded that, originally, the schedule properties belonged to his father, Sri. Sannappi and

subsequent to his death, himself and his brother Sri. Govindgowda, had inherited the same and subsequently before 30 years from the date of filing of the suit, both of them got orally partitioned suit Schedule 'A' property in which Schedule 'B' property was allotted to the plaintiff and schedule 'C' property was claimed to have allotted to the husband of the defendant no.1.

7) On perusal of the documentary evidence, it is also apparent that, the khata of the schedule Property is jointly entered in the name of plaintiff and defendant no.1. In terms of Section 4 of the Easementary Act, it is apparent that, the person who is not the owner of the property can seek easementary rights against the owner of the property, meaning the party cannot claim a suit against the person who is not owner of the property. But it is necessary to observe from the pleadings that, the plaintiff has specifically pleaded in his pleadings that, the Schedule 'A' property was partitioned among himself and his brother Govindgowda before 30 years from the date of filing of the suit and he is claiming himself to

be owner of Schedule 'B' property and defendants to be owners of Schedule 'C' properties. When such is the claim, this Court cannot consider the contentions of the defendants in their written statement regarding the non-partition between the plaintiff and his brother and the burden of proving such separate ownership is on the plaintiff for which a full-fledged trial is necessary. Thus under such circumstances the present application filed by the defendants under Order VII Rule 11 of Code of Civil Procedure is not maintainable. Accordingly this court answers **Point No.1 in the Negative.**

8) POINT NO.2:For the reasons stated above this court proceeds to pass the following order.

:- ORDER:-

The IA No-III filed by the defendants under Order VII Rule 11(a) and (d) of Code of Civil Procedure is hereby dismissed.

(Dictated to the stenographer, transcribed and typed by him, the same is corrected, signed and then pronounced by me in the open court on this the 06th day of June 2026).

(M.RANJITH KUMAR)
I Addl.Civil Judge & JMFC.,
Kollegala.