

**IN THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 04th Day of March 2025

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.
OS No.138-2023**

BETWEEN :

B.C. Ashokachari and others

...Plaintiffs

AND

Nithigere Mahadevappa and others

...Defendants

I.A. No. I

BETWEEN :

B.C. Ashokachari and others

...Applicants/Original plaintiffs

AND

Nithigere Mahadevappa and others

...Opponent/Original defendants

1.	Provision under which the application is filed:	:	U/o 39 rule 1 and 2 R/w Sec.151 of CPC.,
2.	Relief sought for	:	Interim Temporary injunction
3.	Date on which the application is filed	:	13.04.2023
4.	Number of the application	:	IA.No.I

5.	Date on which the objections are filed by different opponents:	:	-----
6.	The date on which the orders is passed:		04-03-2025

Date:04-03-2025
Place: Channagiri.

(Smt.Mahalakshmi. G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON IA No.I

The plaintiffs filed instant application U/o 39 rule 1 and 2 R/w Sec.151 of CPC., seeking add interim temporary injunction against the defendants with respect to suit schedule property is concerned. This application filed along with the suit.

2. Sum and Substance of the affidavit as under:

The plaintiffs have given a schedule property at the application and according to it, the property bearing Sy.No.90 /4 situated at Agarbannihatti Village, Kasaba Hobli, Channagiri Taluk, consisting road which is bounded by East: Sy.No.89 road mentioned in the sketch, West-Noth-South: Property belongs to defendant No.1. The plaintiff No.2 sworn an affidavit and has stated that, they have filed the present suit seeking the relief of permanent injunction against the defendants and to consider the plaint averments as part and parcel of this application. He has right and interest over the road mentioned in the village map which is passes through the property of defendant No.1. For which the defendants have no any right to cause obstruction to the public for the utility of the said road. But the defendants

caused obstruction to use the said road mentioned in the village map for him as well as for the public by putting up fence on 10.02.2023 and caused obstruction to the free movement and use of the said road. That apart the defendants repeatedly closed the said road situated in Sy.no.90/4 B. The plaintiffs are unable to restrain the illegal acts of the defendants without the assistance of this court. Thus, the plaintiffs constrained to file the present suit against the defendants. If this application is not allowed he will be put to great injustice and causes irreparable loss to them. Thus, prays to allow the application.

3. In response to the suit summons the defendants appeared and filed written statement as well memo to treat the same as objections to IA No.I. Wherein they specifically denied the entire application as well as plaint averments. The existence of alleged road in their property and the non existence of alternative road to reach the their property. The alleged road is not belongs to the government. They specifically contented that, the present application is not maintainable and tenable under law. The plaintiffs have not pleaded anything about the details of schedule property in their plaint and the existence of road and its identity and description. They denied the plaint para No.4 pleadings, accordingly, there is no existence of road mentioned in the village map since from 30 years as asserted by the plaintiffs and said road is not passes through the property of the defendants or the other persons and they have not caused any trouble to the public. The defendant No.1 specifically denied the existence of 3 acres graveyard in Sy.No.89 and scheduled road in the said Sy.No. If really the schedule road and graveyard is in existence, then the panchayath authority ought to have taken

necessary steps to vacate the encroached area and the panchayath authority ought to have taken necessary legal action against the person who have caused obstruction and public nuisance for the free utility of the road as well graveyard. The present case is not filed by the plaintiffs in the Representative capacity. Thus, the present suit is not maintainable. The plaint schedule does not consist the description as well identity of the property. If so, the road is existed then the particulars have to be proved by the plaintiffs. The plaintiffs have not pleaded anything about the ownership of their property and the nature of obstruction he had facing in the plaint. Thus, prays to dismiss the application.

4. On the basis of rival contention this court formulated the following points for determination.

POINTS

1. Whether the Plaintiff has made out prima facie case?

2. Whether the balance of convenience lies in favor of the plaintiff?

3. Whether the plaintiff will be put to irreparable loss, if the order as prayed for is not granted ?

4. What order?

5. Heard the learned counsels appearing for the plaintiff and defendants. Perused the records and on perusal of the same, my findings to said points are as under;

POINTS

Point No.1 to 3 : In the Negative

Point No.4 : As per the final order

for the following.,

REASONS

6. Point No. 1: In order to establish the prima facie case, the plaintiffs produced sketch of re Sy.No.90, the village map, the copy of notice, 7 photographs and one CD, the RTC for the year 2022-23 of Agarabanni hatti Village, bearing Sy.No.90/4B measuring 3 acres 5 guntas stands in the name of defendant No.1 as per the entries in column No.9 and 12(2), computerized copy of RTC pertaining to Sy.no.89 for the year 2019-2020 measuring 8 acres 21 guntas stands in the name of Akram S/o Rasid Sab, Latha, Mohammed Sharif Sab, graveyard and plaintiffs name also depicts in column No.9 and 12(2) of the said document. The computerized copy of RTC pertaining to Sy.no.85 of Agarabanni hatti Village. Computerized copy of RTC for the year 2023-24 bearing Sy.No.90/4B of Agrabannihatti Village stands in the name of defendant measuring 3 acres, the C/c of Karanataka Revision settlement Akarband pertaining to Sy.No.90/4B measuring 3 acres 5 guntas, and the letter issued by the Shirastedar Taluk Office, Channagiri Addressed to Tahasildar Taluk office, Channagiri dated 24.10.2022 seeking identification of the road to reach Hindu graveyard in Agarabanni hatti Village in Sy.No.89.

7. Though the defendants filed written statement but have not filed any documents in support of their contention. Having taking note of prima-facie materials placed by both the plaintiff and defendants it appears that, the plaintiffs sought relief of permanent injunction against the defendants in his favour as well as on behalf of public for the utility of schedule road as described in the village map. It is the specific assertion of the plaintiff that the alleged schedule road is in existence in Sy.No.90/4B. but the plaintiff described the suit as well as application schedule property with restricted to schedule road existence in Sy.No.90/4B is concerned and no details of particulars of suit schedule property in the said schedule like measurement of the road as well as through which private properties the scheduled road is in existence. its extent along with boundaries. The plaintiff neither mentioned nor described how the defendants obstructed to reach his property. The plaintiffs also failed to plead details of his property.

8. The plaintiffs as sought the relief of permanent injunction against the defendant. According to the plaintiffs the utility of the road which passes through defendant property. But the present suit is not filed as per Order 1 Rule 8 of CPC., as well the plaintiffs also not pleaded any public nuisance caused by the defendants with respect of the utility of the said road is concerned as emurated in Sec. 91 of the CPC., The present suit is not attracts Sec.91 of CPC., and the plaintiffs has not filed the present suit on the representative capacity. If so he

ought to made effort to concerned public authority first to get the remedy. In the present case no such efforts are found made by the plaintiff side.

9. In the absence of the specific pleadings and the description and identity of the exact suit schedule property the plaintiffs has failed to establish prima facie case to grant temporary injunction at this stage. Under such circumstances, the prima facie materials placed on record, or not in consonance with the claim of the plaintiff. Moreover the present suit is not filed in the representative capacity.

10. Moreover the plaintiffs has described the suit schedule property and as per the schedule the suit schedule property is in Sy.No.90/4B consisting schedule road mentioned in the village map at Agarabannihatti village but to establish the said road is in existence there is no specific pleadings in the plaint and its boundaries. Thus, the plaintiffs also avered that the suit schedule property pass through between the property of defendant No.1. but the defendants denied the assertion of the plaintiff in his written statement. Thus, the same needs to be put into box for trial. Therefore in my considered opinion unless and until full pledged trail is concluded in the matter, it is not possible to hold the existence of the alleged road either in the property of plaintiffs or in the property of defendants. Thus, in my considered opinion, at this stage, the plaintiff has not made out prima facie case to grant the ad interim temporary injunction against

the defendants. As such the **point No.1 is held in the negative.**

11. Point No.2 and 3: These two points are interconnected. As such are taken at once for discussion.

The existence of prima-facie case is fundamental for the grant of interim temporary injunction. The plaintiff has to prove the said aspect at first by placing prima-facie material too. The balance of convenience and irreparable injuries are always fall in line with prima-facie case. In the case on hand, the plaintiff has failed to prove the very existence of prima-facie case and therefore, balance of convenience, irreparable injury would also not in favour of plaintiff. Thus, the **point no. 2 and 3 are held in the Negative.**

12. Point No.4 : As a result, this court proceed to pass the following:

Order

**The IA No.I filed by the
plaintiffs U/o 39 Rule 1 and 2 R/w
Sec.151 of CPC is hereby rejected.**

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 04th day of March 2025)

**Date: 04-03-2025
Place: Channagiri.**

**(Smt.Mahalakshmi .G)
II Addl Civil Judge And Jmfc.
Channagiri.**

