

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

**PRESENT: SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.
OS No.238-2024**

BETWEEN :

AND

...Defendants

BETWEEN :

...Applicants/Original plaintiffs

H.B. Shantakumara 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	:	22.08.2024

4.	Number of the application	:	IA.No.I
5.	Date on which the objections are filed by different opponents:	:	30.09.2024
6.	The date on which the orders is passed:		17-04-2025

Date:17-04-2025
Place: Channagiri.

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

ORDER ON IA No.I

The plaintiff filed instant application U/o 39 rule 1 and 2 R/w Sec.151 of CPC., seeking add interim temporary injunction against the defendants.

2. Sum and Substance of the affidavit as under:

The plaintiff as given the schedule property in the application and according to it the property bearing Sy.No.40/10 of Hatti Village from main road of Hirehuda village gadi and connects directly to the suit 'A' schedule property from East-West to an extent of eastern edge to western edge and north-south 15 feet width in Sy.No.40/10 of Hatti Village, Kasaba Hobali, Channagiri Taluk is described as suit 'B' schedule property in the present suit.

3. The plaintiff has sworn the affidavit and stated that he is the owner in possession of suit 'A' schedule property bearing Sy.No.40/4 of Hatti Village measuring 1 acre 11 guntas and the said acquired by him through registered partition deed vide SRO No.2839/2016-17 dated 12.09.2016. Pursuant to that the

mutation also effected in his name vide MR No.H8/2016-17. Since from he is enjoying the suit 'A' schedule property having its peaceful possession and cultivation. Originally the said property is totally measuring 2 acre 22 guntas in total and it was assigned as Sy.No.40/4. During 2016-17 he and his brother's wife/Defendant No.2 entered into partition. Accordingly allotted equal share in the said Sy.No.40/4 measuring 1 acre 11 guntas each. His allotted share numbered as Sy.No.40/4 and Sy.No.40/10 is assigned to Defendant No.2. These properties are adjacent properties to each other and divided from same Sy.no.. The suit schedule 'A' property is existed eastern side and the property in Sy.No.40/10 of Hatti Village is existed his side. On 19-01.2024 defendant No.2 sold out her share ie., Sy.No.40/10 measuring 1 acre 11 guntas to defendant No.1 through a registered sale deed. Since from the date of partition and prior to that also he and his family members are using of 'B' suit schedule road in the property of defendant No.1 for in-grace and ex-grace. The suit 'B' schedule road which commences from the southern end of Sy.No.40/10 from the main road of Hirehuda Village and connects directly to the 'A' suit schedule property and which is part and parcel of Sy.No.40/10 of Hatti Village.

4. It is further submitted that the existence of suit 'A' and 'B' schedule properties are shown in the rough sketch annexed to the plaint which is part and parcel of this plaint. The plaint 'B' schedule road which commences from main road which passing through Sy.No.40/10 of Hatti village is belongs to defendant No.1 and it is to reach the land of his suit 'A' schedule property. After allotting the suit 'A' schedule property through partition deed he is peacefully continuously acquired right of easement by way of necessity and absolutely and except this

road there is no alternative road available to reach his 'A' schedule property. Such being the case, the defendants having no absolute right over the 'B' schedule road and they have no lawful possession over the road as it existed before purchase of this property from the defendant No.1. Thus, he got right of making use of the said 'B' schedule road to reach his property. On 2nd week of August 2024 the defendant No.1 along with other defendants have obstructed him for making use of the said 'B' schedule road to reach and denied right of way to reach his property. The defendants are very powerful persons in locality as such their illegal acts of the defendants are recurring in nature. The aid of this Hon'ble Court is absolutely necessary to safeguard to his rights and possession. Thus, he has prima-facie case in his favour and also balance of convenience lies in his favour. If injunction as prayed is not granted he will be put to irreparable loss and injustice. If this application is allowed no harm and injustice will be caused to the other side. Thus, prays to allow the application.

5. The defendant filed objection and denied each and every facts of the affidavit and contended that, the approach of plaintiff that there is 'B' schedule property is in existence even in the absence of documentary evidence. The plaintiff has suppressed the true facts with an intention to have wrongful gain. Under such circumstances the plaintiff is not entitled for injunction as there is no bonafides on the part of plaintiff. There is no prima-facie case made out by the plaintiff and balance of convenience is not in favour of plaintiff. If the temporary injunction is granted automatically the plaintiff may take advantage by abusing the process of law and great hardship

and inconvenience would be caused to the defendants. Hence, prays to dismiss the application.

6. 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?

7. 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

8. Point No. 1: In order to establish the prima-facie case, the plaintiff produced computerized copy of RTC for the year 2023-24 of Hatti Village, bearing Sy.No.40/4 measuring 1 acre 11 guntas stands in the name of

plaintiff. The mutation register extract dated 04.11.2016 with respect to Sy.No.40/4, depicts the mutation entries effected by virtue of partition deed entered among the plaintiff and the defendant No.2. The copy of registered partition deed dated 12.09.2016 wherein at page No.3 of the said partition deed at 1st schedule property is fallen to the share of the defendant no.2. who is none other than the wife of his brother ie., Sy.No.40/4 measuring 2 acres 22 guntas out of which eastern side 1 acre 11 guntas was fallen to the share of the defendant No.2 bounded by East: Hirehuda gadi, West: land of Block No.1, North: land of Lahi No.3, South: Land of lahi No.3 and schedule No.2 at page No.5 of the partition deed also depicts the share allotted to the plaintiff in the said Sy.No. I.e, with respect to Sy.No.40/4 totally measuring 2 acres 22 guntas out of which western side 1 acre 11 guntas assessed at Rs. 1.25 paise bounded by East: property allotted to defendant No.2 West: Land of Lahi No.1, North: Land of Lahi No.3 South: Land of Lahi No.5.

9. The digital copy of registered sale deed dated 02.01.2024 executed by defendant No.2 infavour of defendant No.1 with respect her property allotted through partition deed.

10. The RTC entries and mutation entries produced by the plaintiff depicts the name of plaintiff in column No.9 and 12(2) and it's extent can be gathered from the said document as per 1 acre 22 guntas. In the said Sy.No.. The plaintiff also placed registered sale deed as well as copy of registered partition deed.

11. On the other hand the defendant No.1 filed written statement as well objected the claim of the plaintiff where under he seriously disputed the existence of suit 'B' schedule property as pleaded by the plaintiff. The plaintiff has suppressed material facts before this court.

12. In support of his statement of objection he has not placed any documentary evidence to rebut the prima-facie case of the plaintiff.

13. Having taken note of the prima-facie materials placed by the both the plaintiff and defendants it appears that the originally the property bearing Sy.No.40/4 is belongs to the ancestral property of plaintiff and defendant No.2 where they entered into the registered partition among them on 12.09.2016. Accordingly the mutation also effected into their names and divided the said 2 acres 22 guntas of property in Sy.No.40/4 equally and allotted 1 acre 22 guntas each. Wherein the plaintiff's share is assigned as Sy.No.40/4 and is brother's wife share assigned as Sy.No.40/10. Thereafter on 19.01.2024 the defendant No.2 has sold out her share to defendant No. 1 and possession also delivered on the same day itself. Since the date of partition and before partition the plaintiff and his family members are making use of 'B' schedule property in the property of defendant No.1 for their ingrace and exgrace uptill know. The said suit 'B' schedule road which commences from the southern side of Sy.No.40/ 10 from main road of Hirehuda Village gadi and connects directly to the suit 'A' schedule property and which is part and parcel of Sy.No.40/10 of

Hatti Village. As already taken note of the boundaries which are given to the property of plaintiff the existence of suit schedule 'B' property north-south 15 feet width in Sy.No.40/10 of Hatti Village for left for the usage of plaintiff and his family members to reach their property situated at Sy.No.40/4. No such road as described in the said partition deed in so far the share of defendant No.2 is concerned in Sy.No.40/10. Under such circumstances the prima facie material placed on record are not convince with the claim of plaintiff in the said Sy.No.40/10. Moreover, the plaintiff has described the suit schedule property and as per the schedule the suit property is the property of plaintiff himself. He claimed 15 feet road with out any specification has to in which part of property belonging to the defendant no.1 it is situated. Thus, the same needs to be put into box for trail. Therefore in my considered opinion, unless and until full pledged trial is concluded in the matter it is not possible to hold the existence of alleged road as described in the rough skecth either in the property of plaintiff or in the property of defendant. Thus, in my considered opinion, at this stage the plaintiff has not made out prima-facie case to grant an add interim temporary injunction against the defendant. As such the **point No.1 is held in the Negative.**

14. **Point No.2 & 3:** These two points are interconnected. As such are taken at once for discussion.

The existence of prima facie case is fundamental for grant of ad interim temporary injunction. The plaintiff has to prove the said aspect at first by placing prima facie

materials too. The balance of convenience and irreparable injuries are always fall inline with prima-facie case. In the case on hand the plaintiff has failed to prove the very existence of prima-facie case and therefore, the balance of convenience, irreparable injury would also not infavour of plaintiff. Thus, the **point no.2 & 3 are held in the Negative.**

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

Order

**The IA No.I filed by the plaintiff
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 17th day of April 2025)

**Date: 17-04-2025
Place: Channagiri.**

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

