

KADG220040202024



**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI**

-. PRESENT :-

Kum.Shama Srivatsa
B.A. LL.B. (Hon's) LL.M
Prl. Civil Judge & J.M.F.C.,
Channagiri.

Dated: This the 07th Day of July 2025

O.S.No.265/2024

PLAINTIFF : Sri. K.O Thippeswamy
V/s

DEFENDANTS : Sri. K.O Hanumanthappa

I.A.NO.II

Applicant/Plaintiff : Sri. K.O Thippeswamy
V/s

Opponents/Defendants : Sri. K.O Hanumanthappa

1.	Provision under which the application is filed	Under Order 39 Rule 1 and 2 of CPC
2.	Relief sought for	Ad Interim Temporary Injunction
3	Date on which the application is filed	17.09.2024
4.	Number of the application	I.A.No.I

5.	Date on which the objections are filed by different opponents	04.01.2025
6.	The date on which the orders is passed	07.07.2025

Order on I.A No.1

Plaintiff filed this instant suit in order to seek ad interim temporary injunction against the defendants

2. Brief Facts stated in the Affidavit:

Plaintiff filed this instant suit seeking declaration having right to easement of necessity and consequential relief of permanent injunction against the defendants pertaining to suit schedule property bearing Sy.No. 73/2 measuring 1 Acre totally 2 Acre situated at Lakshmi Sagar Village, Kasaba Hobli, Channagiri Taluk . On its eastern side in an extent of 10 feet width and in commences from road on the edge of land its eastern side bounded by land of kalanaika , West- land of plaintiff , north- land of Chikkana ,south- road and land of kurubara ramappa. Plaintiff averred in the affidavit appended to application that, the suit is filed as stated supra seeking declaration of easement of necessity of way and consequential relief of permanent injunction pertaining to suit property. On the northern side of defendants land to reach the lands of

southern side on the edge of defendants land on the eastern side running from north to south this fact well within the knowledge of defendant in spite of that on the instigation of other person are not in terms of the plaintiff defendant obstructed for the moment of plaintiff and in vehicles. Plaintiff further averred that, defendant is none other than his brother and has no cause of action .

3. Plaintiff further asserts that, the defendant none other than his brother and has no right cause obstruction and interference in moment of itself and his vehicle by cart or tractor to reach his track. Thus, plaintiff filed this instant application in order to seek temporary injunction against the defendants and his family to restrain them from trespass and cause obstruction for the moment of plaintiff and his vehicle or agricultural implement by carrying in the suit schedule way to reach his land. On the other hand plaintiff also states that, there are no other way to reach suit schedule property of plaintiff except their land stated in the suit schedule. Thus, prayed to allow this application.

4. Statement of objection filed by the defendant:

On the other hand defendant filed detailed objection stating that, the plain averments in the application averments are entirely denied defendants alleged that, plaintiff is using

eastern part of land of the defendant from south to north as right way of reach his land is specifically disputed as denied by the defendant and there is no such place is left by the defendant in this land since the date of partition after this way and no such right included the partition deed. Moreover, defendant is about 500 feet left from south to north and it is cultivated area no parties left by the road as plaint by the plaintiff. As such by way of easement is yet to be decided by this court. At this juncture there is existence of alleged way in the land of defendant in order to seek temporary injunction. Thus application is tenable under law. Thus, prayed to dismiss the suit.

5. Heard the counsel for plaintiff and counsel for defendants. Perused the records and on perusal of the same, following points arises for my considerations;

- 1. Whether the plaintiffs have made out prima facie case ?*
- 2. Whether the plaintiffs have shown that balance of convenience lies in their favour?*
- 3. Whether the plaintiffs have further shown that if temporary injunction as prayed herein is not granted, they will be put to irreparable loss and injustice?*

4. What order ?

6. Having gone through the records produced by the parties and on perusal of the same, my findings on the above points are under:

Point No.i : In the Negative

Point No.ii : In the Negative

Point No.iii : In the Negative

Point No.iv: As per the final order

for the following ;

REASONS

7. Point No. 1 to 3:

Since these points are interlinked with each other and they form part of the same transaction, they are taken up together for common discussion to avoid the repetition of facts.

8. Plaintiff asserts that, the suit schedule property is road to reach the his property. Apart from this road he has no alternative road. Under such circumstance defendant by listening others words caused impediment to movement of plaintiff and his vehicles for his property. On the other hand defendant asserts that, there is no specific road as stated in the suit schedule property situated in the defendants land to reach the plaintiff land. Under such circumstance plaintiff seeking

temporary injunction against defendant without considering whether there existing of road or not is not tenable under law.

9. It is well settled principle of law that, plaintiff must establish prima facie case. In order to seek temporary injunction against defendant along which the balance of convenience which fall into his favour. In order to establish the same, the plaintiff placed xerox copy of sale deed dated: 19.10.2017, original registered partition deed bearing SR No. 1426/1989 dated: 23.08.1989, certified copy of MR No. T5/2015-16 xerox copy of bill bearing T121/2005 dated: 26.02.2005, xerox copy of death certificate of Smt. Anusuyamma dated: 12.03.2005. certified copy of RTC of the year 2023-24 in Sy.NO. 73/2, certified copy of RTC of the year 2023-24 in Sy.NO. 73/3 . Plaintiff at this juncture must establish there is existence of cart road. In order to establish the same plaintiff placed photocopy of sale deed and original partition deed dated: 23.08.1989. On perusal of entire record no where it is mentioned there is existence of road to reach the plaintiffs land through defendant land . Under such circumstance, plaintiff seeking permanent injunction at this juncture not tenable as he failed to show there is existence of road to reach his suit schedule property, as stated in the schedule. This court can not grant the temporary injunction without ascertaining the actual facts of the suit schedule

property. When plaintiff miserably failed to establish that there is existence of suit schedule property in the defendants land to reach his property interim relief cannot be granted as defendant rightly objected the question of existence of the road itself is in issue which is for the fulfilled consideration and same can not be construe at this juncture without dwelling to the entire property documents and oral evidence. Therefore plaintiff not made out prima facie case in his favour. Accordingly, the plaintiff fails to establish the prime aspect to seek the injunction. Thus, considering the balance of convenience and irreparable loss does not arise. Thus, the **Point No. 1 to 3** are held in the **Negative**.

10. **Point No. 4:-** In view of my findings on Point Nos.1 to 3, I proceed to pass the following:

ORDER

**The IA No.I filed U/O.39 Rule 1 and 2 of
CPC is hereby rejected.**

No order as to costs.

(Dictated to the stenographer and corrected and then pronounced by me in the open court on this
07th Day of July , 2025.)

Sd/-
(Kum. Shama Srivatsa)
Prl Civil Judge & JMFC.,
Channagiri.