

IN THE COURT OF THE PRL. CIVIL JUDGE AT BANTWAL

PRESENT:

SRI.RAJENDRA PRASAD K.S. LL.M

Prl. Civil Judge, Bantwal.

Dated this the 14th day of July 2026

O.S.No.34/2025

PLAINTIFF : **Smt. Shambavi**
Aged 74 years,
W/o Late Sridhar Sherigara,
R/at Kalpane House, Sangabettu Village,
Bantwal Taluk.

(By Adv: Sri. M Chidananda Kedilaya)

-Vs-

DEFENDANTS No.1: Mr Shanthi Gowda,
Aged about 55 years,

2. Smt. Sunitha,
W/o Sri Shanthi Gowda
Aged about 45 years,

3. Mr. Chandra Gowda
Aged about 60 years,

4. Smt. Nalini,
W/o Chandra Gowda
Aged about 50 years,

5. Mr. Mukesh
Aged about 25 years
W/o Chandra Gowda
All are R/at Siddakatte,
Bantwal Taluk

(By Adv: D1 to D5 – Sri. Suresh Shetty)

PARTIES IN I.A. No.II/2026

**Applicant/
Plaintiff** : **Smt. Shambavi**

-Vs-

**Opponent/
Defendant** : **Mr.Shanthi Gowda and others**

ORDERS ON I.A. No.II

I.A No.II is filed by the plaintiff U/o 39 Rule 1 & 2 R/w section 151 of C.P.C seeking to grant an ad-interim order of temporary injunction restraining the defendants, their men, agents, servants or anyone claiming through or under them from trespassing into the plaint schedule property or causing any damage to the same or placing obstruction to the plaintiff in gaining access to the Items No. 1 and 2 of the plaint schedule properties through Item No. 3 of the plaint schedule property i.e Sy.No. 230/2 and government land in Sy.No.230/4A1 of Sangabettu village, or in any manner obstructing the plaintiff from using and utilizing Sy.No. 230/4A1 of Sangabettu village for user and enjoyment of the plaint schedule property or in any manner interfering with the user and enjoyment of the plaint schedule property by the plaintiff pending disposal of the suit in the interest of justice and equity.

2. In the affidavit accompanying to the application, the plaintiff has sworn that, plaint schedule items No. 1 and 2 of the

properties were acquired by her under registered Sale Deed dated 28.10.2008. At the same time, in order to have motorable access to the items No. 1 and 2 of the plaint schedule properties, she had purchased an extent of 0.06 cents of land which is Item No. 3 of the plaint schedule property herein under registered deed of Sale dated 28.10.2008. Accordingly, she is in possession and enjoyment of the plaint schedule properties by putting up a residential house therein. Further the plaintiff has sworn that, there exist a Kumki land in survey no. 230/4A1 on the Western side of the items No.1 and 2 of the plaint schedule properties and on the further Western side of the government land, the property of the defendants No.1 and 3 is situated. The said properties of defendants are divided by roadway and same is purchased by her as per the registered sale deed. As such she has possessed the plaint schedule properties as well as kumki land since time immemorial and there have been no obstructions whosoever nature from anyone including that of defendants till date. The plaint schedule properties and aforesaid Kumki land are situated touching each other. Further plaintiff has sworn that, the roadway which she had acquired i.e item No. 3 of the schedule property is passing through the Sy.No.230/2 and 230/2A1. After passing through Sy.No.230/2, the said road passes through the Government land in Sy.No.230/4A1 and the road also passes through aforesaid Government land to Sy.no. 133/1A i.e. item no. 2 of the plaint schedule property. Except the said road plaintiff has no access to Item no.1 and 2 of the plaint schedule property.

The said roadway runs through Sy.No230/4A1 and 230/2 in turn ultimately reaches to Kalpane Road.

3. Further, the plaintiff has sworn that, when things stood thus, on 13.12.2024 the defendants have attempted to place obstruction for user and enjoyment of 20 feet roadway leading to the plaint schedule property which passes through Item No. 3 of the schedule property. The defendants have attempted to erect a barbed wire fence so as to block the roadway leading to the plaint schedule property. Immediately she had approached the jurisdictional police with a complaint, wherein the police have rushed to the spot and prevented the further illegal acts of the defendants. Though, she was kept quiet for a considerable period of time, but once again on 20.01.2025 the defendants threatened her to block roadway through Item No. 3 of the plaint schedule property so also through Sy.No.230/4A1 of the Sangabettu Village and also attempted to install granite stone with an intention to erect barbed wire fence. Though, she has approached the jurisdictional police with a complaint, but they have refused to receive the same stating that, the dispute is civil in nature. Further, the plaintiff has sworn that, since she is not in a position to withstand the highhanded acts of the defendants therein, left with no other alternative efficacious remedy, she has constrained to file this suit seeking for permanent prohibitory injunction against the defendants. Further the plaintiff has sworn that, she has made out a prima-facie and balance of

convenience is also lies in her favour. If an order of temporary injunction is not granted she will be put into great hardship and injury which cannot be compensated in any manner. On the other hand, no hardship or injury will be caused to the defendants if the application is allowed. Hence, the plaintiff prayed for allowing the application.

4. On the contrary, the defendants have filed their written statement along with a memo adopting the written statement averments as objection to IA No.II. In the written statement the defendants have denied the entire averments of plaint. On the other hand, they contending that, the father of defendant No.1 and father-in-law of defendant No.2 namely Gopala Gowda had purchased an extent of 0.25 cents of land in Sy.No. 230/2 somewhere in the year 1970 and after his death RTC was mutated in the name of his children including the defendant No.1 herein. Now the said land is plotted and provided with new sub division number as Sy.No.230/12. Adjacent to the above said land on the Eastern side there is Government land in Sy.No.230/4A1 measuring 0.42 cents and out of which the defendants no.1 and 2 are in possession to an extent about 0.16 cents of land. The aforesaid 0.25 cents of land in Sy.No. 230/12 and 230/4A1 are in compact block surrounded by mud agalu and fence. The aforesaid lands were in the possession of father of the defendant no.1 till his death and after his demise the defendant no.1 is in possession and enjoyment of same and

residential house and other improvements are there in Sy.No. 230/12. The defendant no.1 has also planted about 150 areca plants and coconut plants and other fruit bearing trees in Sy.No.230/4A1 there is common irrigation facilities to both patta land and Government land which is in the possession of defendants no.1 and 2. Further it is contended by the defendants that, defendant no.1 had also filed an application in Form No.53 for grant of land in Sy.No. 230/4A1 and same is pending for enquiry in NCR SR No.76/2018-19.

5. Further the defendants have contending that, adjacent to the land of the defendant no.1, the land of defendant no.3 is situated. The defendant no.3 and other legal heirs of Veeramma, the mother of defendant no.3 had sold the item no. 3 of plaint schedule land in favour of vendor of the plaintiff to have and road access to the plaintiff's land. There is fence on the North and Southern side of item no.3 of plaint schedule property. Now the plaintiff is using the said land as road to reach the item no.1 and 2 of plaint schedule property in Sy.No. 230/4A1. The plaintiff is not in possession of any portion of land except the land used for road. Further the grandchildren of Veeramma i.e. defendant No.3, Harish Gowda, Thungamma, Rohini and others were in possession of land in Sy.No. 230/4A in different portion and even the portion of house of respective persons are comes within Sy.No. 230/2A1. But they were not made as parties to the suit. Further it is contended that, the Item no.1 and 2 of plaint

schedule property are not kadim warga land and as such they got no Kumki privilege as stated in the plaint. The plaintiff has not approached the Court with clean hands. The plaintiff is intending to get relief of injunction over the Government land in Sy.No. 230/4A1. At no point of time the defendants have objected the plaintiff while using the roadway stated in the plaint. When such is the case, intention of the plaintiff is only to get forcible possession of Government land which is in the possession of defendants. The defendant no.1 is in possession of the portion of land in Sy. No. 230/4A1 and remaining portion of land in Sy.No.230/4A1 excluding the land wherein road passes is in the possession of legal heirs of aforesaid Veeramma. The plaintiff has suppressed the material facts and filed this suit with an intention to get an order of injunction over the Government land in Sy.No.230/4A1. Further the defendants have contended that, the plaintiff has not made out prima-facie case for grant of an order of temporary injunction in her favour and the balance of convenience not lies in favour of the plaintiff. If an order of injunction is not granted no hardship and injury will be caused. On the other hand they will put into much hardship which compensated in any manner. Hence, the defendants prayed for dismissal of the application with cost.

6. I have heard the arguments of learned counsel for the plaintiff and defendants on I.A.

7. I have gone through the I.A., affidavit, written statement averments and the materials placed on record.

8. The following points would arise for consideration of this Court:-

1. Whether the plaintiff has made out prima-facie case for granting an order of temporary injunction in her favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether any hardship or injury will be caused to the plaintiff if an order of temporary injunction is not granted?
4. What order ?

9. My findings on the aforesaid points are as hereunder:-

- Point No.1 : In the **Negative**
Point No.2 : In the **Negative**
Point No.3 : In the **Negative**
Point No.4 : As per final order
for the following:-

:REASONS:

10. **Points No.1 to 3:** Since all these points are interconnected with each other, hence they are taken up together for common discussion and to avoid repetition of facts.

11. Before delving upon the merits of the application for grant of an order of injunction, it is necessary to discuss few aspects on the concept of temporary injunction. At the very out-set, it is to be noted that, granting an order of temporary injunction is a matter resting with the exercise of discretion of the Court. While exercising such discretion, the Court has to look into the prima-facie case, balance of convenience lies in favour of plaintiff and irreparable injury or hardship which may be suffered by the plaintiff if the interim injunction is disallowed by the Court. The relief of temporary injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The main object of interim injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolves in his favour at the trial. The need for such protection has to be weighed against the corresponding need of the defendant to be protected against injury resulting from preventing his exercising legal right for which he could not adequately be compensated. The Court must weigh the need of interim injunction and determine where balance of convenience lies in order to protect the defendant while granting an interim injunction in his favour.

12. In the background of aforesaid settled legal principles governing for granting an order of temporary injunction and in order to ascertain the existence of prima-facie case, this Court

has gone through the pleadings as well as materials placed by both parties at this juncture. At the very outset, the present suit has been filed by the plaintiff seeking for the relief of permanent prohibitory injunction restraining the defendants, their men, agents, servants, or anyone claiming through or under them from trespassing into the plaint schedule property or causing any damage to the same or placing obstruction to the plaintiff in gaining access to the Items No. 1 and 2 of the plaint schedule properties through Item No. 3 of the plaint schedule property i.e Sy No. 230/2 and government land in Sy No.230/4A1 of Sangabettu village, or in any manner obstructing the plaintiff from using and utilizing Sy No. 230/4A1 of Sangabettu village for user and enjoyment of the plaint schedule property or in any manner interfering with the user and enjoyment of the plaint schedule property by the plaintiff and such other reliefs. It is the specific assertion of the plaintiff that, the plaint schedule Item no.1 and 2 properties were acquired by her under registered Sale Deed dated 28.10.2008. At the same time, in order to have motorable access to item no.1 and 2 of plaint schedule property she had purchased item no.3 of plaint schedule property. Further on the Western side of item no.1 and 2 of plaint schedule property there exist a Kumki land in Sy.No.230/4A1. On the further Western side of said Government land, the property of defendants no.1 and 3 is situated. The said properties of defendants are divided by roadway purchased by the plaintiff. The roadway which was acquired by the plaintiff i.e., item no.3 of

plaint schedule property is passing through Sy.No.230/2 and 230/4A1 and thereafter, it reaches item no.2 of plaint schedule property. Except the said road the plaintiff has no access to item no.1 and 2 of plaint schedule property. Facts being so, on 13.12.2024, the defendants have attempted to place obstruction for user and enjoyment of 20 feet roadway leading to the plaint schedule property which passes in item no.3 of the plaint schedule property. Immediately the plaintiff had approached the jurisdictional police wherein the police have rushed to the spot and prevented further illegal acts of the defendants. However, on 20.01.2025 once again the defendants have threatened to block the way of item no.3 of plaint schedule property so also in Sy.No.230/4A1 of Sangabettu Village.

13. In support of the said assertion, the plaintiff has produced copy of registered Sale Deeds dated 28.10.2008 which discloses that, the plaintiff had purchased the plaint schedule item no.1 to 3 properties from her vendor. The defendants have also not disputing the said sale deeds and also the possession of plaintiff over item no.1 to 3 of plaint schedule properties. Further, the RTCs produced pertaining to plaint schedule properties are also standing in the name of plaintiff herein. The plaintiff has also produced photographs pertaining to plaint schedule properties wherein the plaintiff is using item no.3 of plaint schedule property for motorable access to item no.1 and 2 of plaint schedule properties. The plaintiff has also produced copy of

sketch pertaining to Sy.No.,230/2 which further discloses that, the plaintiff is using item no.3 of plaint schedule property to an extent of 0.06 cents for road access to item no.1 and 2 of properties. Further on the Western side of item no.1 and 2 of plaint schedule property the land in Sy.No.230/4A1 is situated. Now the plaintiff is claiming 20 feet roadway leading through Sy.No.230/4A1 which is the Government land. The learned counsel for the plaintiff has strenuously argued that, except the said roadway the plaintiff has no other access to reach plaint schedule item no.1 and 2 properties. Further, the plaintiff is using the said roadway in Sy.No.230/4A1 and Sy.No.230/2 since time immemorial. Now the defendants are obstructing for use of said roadway. Hence, it is very much necessary to grant an order of temporary injunction in favour of plaintiff. Otherwise, the plaintiff will be put into much hardship and injury which cannot be compensated in any manner.

14. On the other hand, the learned counsel for the defendants argued that, the defendants have admitted the item no.3 of plaint schedule land purchased by the plaintiff to have road access to plaint schedule item no.1 and 2 properties. Accordingly, the plaintiff is using the said land as road to reach item no.1 and 2 of plaint schedule property. Further argued that, adjacent to the land of defendants, on the Eastern side there is Government land in Sy.No.230/4A1 measuring 0.42 cents and out of which the defendants no.1 and 2 are in possession to an extent about 0.16

cents of land. The aforesaid 0.25 cents of land in Sy.No. 230/12 and 230/4A1 are in compact block surrounded by mud agalu and fence. The aforesaid lands were in the possession of father of the defendant no.1 till his death and after his demise the defendant no.1 is in possession and enjoyment of same and residential house and other improvements are there in Sy.No. 230/12. Further argued that, the plaintiff has suppressed the material fact only with an intention to get relief of injunction over the Government land in Sy.No. 230/4A1.

15. Having heard the rival submissions of both learned counsel for plaintiff and defendants, I have given my anxious consideration towards pleadings as well as materials placed on record. At the very outset, the plaintiff has sought for permanent injunction against the defendants restraining them from trespassing into plaint schedule property or causing any damage to the same or placing obstruction to the plaintiff in gaining access to the item no.1 and 2 of plaint schedule properties through item no.3 i.e., Sy.No.230/2 and Government land in Sy.No.230/4A1 of Sangabettu Village or in any manner obstructing the plaintiff from using and utilizing Sy.No.230/4A1 of Sangabettu Village. However, the plaintiff has not included the said Government land bearing Sy.No.230/4A1 through which he got alleged road access to the plaint schedule properties. Even the plaintiff has also failed to make the Government as party to the suit. When the plaintiff is claiming right over the Government

land and there is dispute regarding its usage or pathways/road requires the revenue department are concerned authority to be made as party to the suit. Further, on perusal of the Sale deeds and Survey sketch produced before the Court, they does not disclose about existence of alleged 20 feet road claiming by the plaintiff for access to the plaint schedule properties. On the other hand, it is the specific assertion of the plaintiff that, the land bearing Sy.No.230/4A1 is a Government land having kumki privilege. It is to be noted that, kumki lands are State owned waste lands meant strictly as an agricultural aid such as, for grazing or green manure and they do not confer private ownership or standalone road access. When the plaintiff is claiming road access through the Government kumki land he has to produce cogent materials to show the existence of road in the kumki land. However, the plaintiff has not produced documents to show that, there exist a 20 feet road in Government land bearing Sy.No.230/4A1. Even nothing is placed on record to show that, the plaintiff is exercising Kumki privilege over the Government land bearing Sy.No.230/4A1. When such being the case, the plaintiff cannot seek an order of injunction in respect of the Government land.

16. That apart, on going through the prayer sought in the application, the plaintiff has prayed multiple reliefs. The plaintiff has sought for an order of temporary injunction against the defendants restraining them from trespassing into the plaint

schedule property or causing any damage to the same or placing obstruction to the plaintiff in gaining access to the item no.1 and 2 of plaint schedule properties through item no.3 i.e., Sy.No.230/2 and Government land in Sy.No.230/4A1 of Sangabettu Village or in any manner obstructing the plaintiff from using and utilizing Sy.No.230/4A1 of Sangabettu Village to reach the plaint schedule properties. The said reliefs sought for by the plaintiff are not sustainable in law. No doubt, the defendants have not disputed the possession of plaintiff in respect of plaint schedule item no.1 to 3 properties, but the existence of alleged road in Government land bearing Sy.No.230/4A1 has to be proved by the plaintiff by producing material document. As already discussed herein above, the Kumki land are exclusively meant for grazing or for green manure and it cannot be used as a road to have access to one's property. Under such circumstances, the plaintiff is not entitled for an order of injunction against the defendants. It is to be noted that, while granting an order of temporary injunction, the plaintiff has to establish the existence of prima-facie triable and arguable case in her favour. On going through the pleadings and materials placed on record, they does not disclose prima-facie triable and arguable case in favour of the plaintiff. Further the balance of convenience is also not lies in favour of the plaintiff. If an order of injunction is not granted no hardship or injury will be caused to the plaintiff. In the touch stone of discussion made herein above, I answer points No.1 to 3 in the **'Negative'**.

17. **Point No.4**:- For the foregoing reasons and discussion made on Points No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.II filed by the plaintiff U/o.39 Rule 1 and 2 R/W Section 151 of CPC is hereby dismissed.

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

(Dictated to the Stenographer, computerized by her, corrected by me and then pronounced in open court on this 14th day of July 2026).

**(RAJENDRA PRASAD.K.S.)
PRL. CIVIL JUDGE,
BANTWAL .**

