

**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
BANTWAL, DAKSHINA KANNADA.**

Present: - Smt. Ramya H.R., B.A.,L.L.M.,
Prl. Civil Judge & JMFC., Bantwal,
Dakshina Kannada.

Dated: - This the 9th day of June, 2021.

O.S.No. 109-2012

Between:

1. Meenakshi K (70 years)
W/o K. Ananda Rao,
Kudumbladi House, Kedila Village,
Bantwal Taluk, D.K. - 574 220.
2. Purandara K. (42 years)
S/o K. Andada Rao,
Kudumbladi House, Kedila Village,
Bantwal Taluk, D.K. - 574 220.
3. Harish K (40 years)
S/o K. Andada Rao,
Kudumbladi House, Kedila Village,
Bantwal Taluk, D.K. - 574 220.
4. Yashavantha K (38 years)
S/o K. Andada Rao,
Kudumbladi House, Kedila Village,
Bantwal Taluk, D.K. - 574 220

...Plaintiffs

(By Adv: Sri. D.K.N.)

/ AND /

1. Assistant Executive Engineer,
Panchayath Raj Engineering Sub Division
Bantwal Taluk, D.K.

2. The Executive Engineer,
D.K Panchayath Raj Engineering Sub-Division
Ashok Nagara, Mangalore.
3. The Chief Executive Officer,
Dakshina Kannada Zilla Panchayath,
Ashok Nagara, Mangalore.
4. Deputy Commissioner,
Rep. By Govt of Karnataka,
Dakshina Kannada District.
5. Public Development Officer,
Kedila Grama Panchayath,
Kedila Village, Bantwal Taluk, D.K.
6. Adam, 45 years,
Goodinamajalu House,
Mithur, Idkidu village,
Contractor,
Panchayathraj Engineering Sub-Division
Bantwal Taluk, D.K. **...Defendants**

**(By Adv: D1 to D3 & D5 - Sri. K.R.B., D4 - A.G.P.,
D6 - Exparte)**

Date of Institution of the suit	:	24.03.2012
Nature of the suit	:	Suit for Permanent prohibitory injunction
Date of recording the evidence	:	15.07.2013
Date of pronouncement of Judgment	:	09.06.2021
Total Duration	:	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 09 02 16

Prl Civil Judge & JMFC.,

Bantwal

-: JUDGMENT :-

The plaintiff has filed the suit against the defendants for Permanent prohibitory injunction.

2. The case of the plaintiff in brief as follows:-

One K Ananda Rao was the absolute owner of plaint A schedule property. He died on 17.08.2011. The plaintiffs are the legal heirs of deceased K.Ananda Rao. In O.S. No.109/1995 on the file of this court and R.S.A. No 1332/2007 the Hon'ble High Court has held that, K. Ananda Rao was the owner of suit A schedule property. After the death of said K.Ananda Rao the plaintiffs have succeeded to the plaint A schedule property. There exist a road way of 3 meter width in plaint A schedule property. Which runs from Karimajal to Patrakodi locality. The plaint A schedule property is a private property. Hence, the defendants have got no manner of right to widen the said 3 meter roadway or to any portion of the said road in the plaint A schedule property. But the defendants no.1 to 5 have engaged service of defendant no.6, to form a concrete road in the said 3 meter roadway. In the 3rd week of March 2012, defendant no.6 made an attempt to widen the 3 meter roadway to 7 meter by spreading earth on either side of the plaint A schedule property. Immediately the plaintiff had objected the same. In the process of defendant no.6 also, closed the existing water tank by the side. Defendant no.6 was not in good terms with

the plaintiff. In this regard the plaintiff no.2 has filed objection on 09.03.2012 before defendants no.5. In the said application due to bonafide mistake he has mentioned only item no.1 of the plaint A schedule property. Further, at the instant of defendants no.1 to 5 the defendant no.6 and his men forcibly trespass in to the plaint schedule property and begun to spread earth to either side of the road to a width of 6 meter to 7 meter. Hence, plaintiff issued notice to defendants on 23.03.2012 and also lodged a police complaint to Puttur Police station on 19.03.2012. But due to the influence of defendant no.6, the SHO Puttur did not take positive action. The defendant no.6 has also commenced the concrete work. After passing an order of injunction the defendants have continued their widening work in the plaint A schedule property. On 04.08.2012 the defendants have commenced concreting work in the disputed roadway. In the process now the defendants have formed concreting road to a width of 3 meter in the process of defendants shifted the road portion towards northern portion of plaint A schedule property, where there existed, no road at all. In any event the shifting of concreting road from original 3 meter roadway as such it is clearly an act of widening the roadway in plaint A schedule property on the northern side is high handed on and is liable to be restored back to the plaintiff in its original condition. Hence, this suit.

3. In pursuance of suit summons the defendants no.1 to 5 have appeared through their Counsel and defendant no.1 and 5 have filed written statement. The defendant no.6 has

not appeared before this court. Hence, he has placed exparte. In the written statement, the defendant no.5 has denied all the plaint averments and submitted that, the road in question is not in existence in the plaint A schedule properties. The plaintiffs have no manner of right in the land in which the road is existing. They are not in possession of this land. It is only to make unlawful gain at the cost of the defendants this frivolous suit is filed. The road in question is in existence since more than 50 years in the same land. The road is not widened as alleged. The level of the road was raised by dumping mud and the same was made concrete road. The work carried out was only to develop the existing road. The suit for bear injunction without declaratory relief is bad and not maintainable. Hence, prayed to dismissed the suit.

4. In the written statement, the defendant no.1 has submitted that, the land abutting the alleged road and claimed by the plaintiff as of his ownership is over 20 feet in higher level than the road alleged by the plaintiff. The road is in the same condition as it was earlier except that it has been concertized to make it more secure and long lasting. The width of the road has not been changed. Formerly it was a tar road now it has been made into a concrete road. Nobody can object to the same much less the plaintiff. The work was taken up and completed in March 2012. There was no water tank as alleged by the plaintiff. The work was got executed through the 6th defendant. No water tank was closed by him. Hence, prayed to dismissed the suit.

5. On the basis of the said rival pleadings, the following Issues have been framed:

ISSUES

- 1. Whether the plaintiffs prove that, they are in peaceful possession and enjoyment of the suit schedule property?**
- 2. Whether the plaintiffs prove that the defendants are trying to widen 3 meter width roadway into 7 meter?**
- 3. Whether the plaintiffs prove that the defendants formed concrete road to a width of 3 meter by violating the court order?**
- 4. Whether the plaintiffs prove that they are entitled for relief as sought in the suit? is entitled for relief as claimed in the suit?**
- 5. What Decree or Order?**

Additional Issues

- 1. Whether the defendant no.5 proves that, the suit is not maintainable without previous sanction from Zilla Panchayth as per Sec.295(2) of Karnataka Panchayath Raj Act?**

6. In order to prove their case, the plaintiff no.2 has been examined himself as PW1 and one Aboobakkar has got examined as PW.2 and they got marked 45 documents at Ex.P.1 to P.45. The Ex. P.1 is the copy of the Order passed in R.A.No.1/2006, Ex.P2 is the copy of the Decree passed in O.S.No.109/1995, Ex.P3 and P4 are the RTCs., Ex.P5 is the

copy of the complaint, Ex.P6 is the statement, Ex.P7 and P8 are the Complaints, Ex.P9 is the sketch, Ex.P10 is the Work order, Ex.P11 is the legal notice, Ex.P12 and P13 are the postal receipts, Ex.P14 and P15 is the RTC, Ex.P16 is the sketch, Ex.P17 is the complaint, Ex.P18 is the Certified copy of the Order passed in R.S.A.No.1332/2007, Ex.P19 and P21 are the Police complaint and Postal acknowledgments, Ex.P22 to 29 are the photographs and CD, Ex.P30 is the complaint, Ex.P31 and P32 are the complaint and endorsement, Ex.P33 to P38 are the photographs and C.D, Ex.39 is the spot sketch, Ex.P40 is the receipt, Ex.P41 is the Spot Mahazar, Ex.P42 is the report given by surveyor, Ex.P43 is the endorsement, Ex.P44 is the photos and Ex.P45 is the C.D. On the other hand, the defendants have not chosen to examine themselves but got marked Ex.D1 Sketch on their behalf through confrontation in the cross-examination of PW.1

7. Heard arguments of both the parties.

8. My findings on the above Issues are as under:

Issue No.1 :: In the Negative

Issue No.2 :: In the Negative

Issue No.3 :: In the Negative

Issue No.4 :: In the Negative

Addl Issue No.1 :: In the Affirmative

Issue No.5 :: As per final order for

the following:-

REASONS

9. Issue No.1 and 4 :- Since these issues are interconnected, they are taken up together to avoid repetition of facts.

It is the case of the plaintiffs that, one K Ananda Rao was the absolute owner of plaint A schedule property. He died on 17.08.2011. The plaintiffs are the legal heirs of deceased K.Ananda Rao. In O.S. No.109/1995 on the file of this court and R.S.A. No 1332/2007 the Hon'ble High Court has observed that, title relating to plaint A schedule properties was with the deceased K. Ananda Rao. Thus, the said K. Ananda was the owner of suit A schedule property. After the death of said K.Ananda Rao the plaintiffs have succeeded to the plaint A schedule property.

10. In order to prove their case the plaintiff no.2 has filed affidavit in lieu of his examination-in-chief and examined himself as PW1 and marked Ex.P1 to 45 documents. The Ex.P3 and P4 is the RTCs of the year 1994-95 which shows that, the RTC and khata of the plaint A schedule property stands in the name of Kalikamba Devaru. Further it shows that K.Anada Rao was the cultivator of the said property. The Ex.P2 is the certified copy of the decree passed in O.S.No.109/1995. The Ex.P2 discloses that, Kalikamba Devaru represented by its administrator one K.Ananda Rao has filed suit for permanent injunction against Vasu Madivala and others with respect to plaint A schedule property. The

Ex.P1 is the certified copy of judgement of Civil Judge(Sr Division) & JMFC, Bantwal passed in R.A. No.1/2006. Further, it discloses that, against the judgment and decree passed in O.S.No.109/1995, the Kalikamba Devaru represented by K. Ananda Rao has preferred an appeal. The plaintiff has pleaded that, in R.A. No.1/2006 the Civil Judge(Sr Division) & JMFC, Bantwal and in R.S.A. No.1332/2007 Hon'ble High Court have held that, K.Ananda Rao is the owner of plaint A schedule property. The Ex.P18 is the Certified copy of the Order passed in R.S.A. No.1332/2007 wherein the Hon'ble High Court has observed that, 'the lower appellate court has clarified that, in so far as A schedule property is concerned, the plaintiffs have absolute right and title over the plaint schedule property'. But on perusal of fourth ground for appeal in Ex.P1 discloses that, **'the lower court has observed that title of the plaint A schedule property is not with the K. Ananda Rao'** who is plaintiff no.2 in the said suit. Further, in para 15 of Ex.P1 the Civil Judge(Sr Division) & JMFC, has observed that, **'the Ex.P1 and P2 can at the most help the plaintiffs to establish that, they are the owners of A schedule property'**. But what are the Ex.P1 and P2 documents are not forthcoming in Ex.P1 judgment. However, the plaintiffs have not produced the judgment and decree passed in O.S.No.109/1995. Hence, this court cannot infer the reasons for findings in made in O.S.No.109/1995. Moreover, the Ex.P2 discloses that, the trial court has dismissed the suit of plaintiffs and Ex.P1 also discloses that

Civil Judge(Sr Division) & JMFC has confirm the order of Trial Court in O.S.No.109/1995 and dismissed the appeal filed by Kalikamba Devaru represented by K.Ananda Rao. As per Ex.P3, P4, P14 and P15 RTC and khata of the plaint A schedule property stands in the name of Kalikamba Devaru and not in the name of K.Ananda Rao. However in coloum no.12 of Ex.P3 and P4 RTCs the name of K.Ananda Rao is mentioned in the cultivator column. Thus, it is clear that, K.Ananda Rao is not the absolute owner of plaint A schedule property. But he has filed suit in O.S.No.109/1995 and in R.A. No.1/2006 against Vasu Madivala and others as an administrator. Further, the plaintiffs have pleaded that, the plaintiffs are the legal representatives of K.Ananda Rao. The said K.Ananda Rao has died on 17.08.2011 and after the death of said K.Ananda Rao, plaintiffs are in possession and enjoyment of plaint schedule property as an absolute owner. But the plaintiffs have not produced any documents to show that they are the legal heirs of K.Ananada Rao. Further, it is not the case of plaintiffs that, after the death of K.Ananada Rao they are in possession and enjoyment of suit A schedule property as an administrator of Kalikamba Devaru. Further, Ex.P3 and P4 RTCs are of the year 1994-95 wherein the name of K.Ananda Rao is mentioned in cultivator column. But the Ex.P14 and P15 RTCs are of the year 2011- 12 wherein the name of Kalikamba Devaru is mentioned in cultivator column the plaint A schedule property. Thus, it is clear that, after the death of K.Ananda Rao, the plaintiffs are not entered as cultivators of plaint A schedule property. But the

name of Kalikamba Devaru is mentioned in cultivator column the plaint A schedule property.

11. In support of their case the counsel for plaintiff has relied on decision of **Ramegowda (dead) by Lrs vs M. Varadappa Naidu (dead) by Lrs and another reported in ILR 2006 KAR 1047** wherein it is held that, a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership as a perfectly would title against all the world but the rightful owner. When the facts disclose no title in either party, the possession alone decides. But in the present case the plaintiffs have relied on Ex.P1 and P2 documents to prove that, K.Ananda Rao is the absolute owner of plaint A schedule property. But on perusal of said documents neither the Civil Judge (Sr Division) & JMFC in R.A.No.1/2006 nor in R.S.A. No.1332/2007 the Hon'ble High Court has held that, K.Ananda Rao is the absolute owner of plaint A schedule property. Except the oral evidence the plaintiffs have not placed any material before the court to prove that they are in possession and enjoyment of plaint A schedule property. Moreover, the plaintiffs have also not produced any document to prove that they are the legal heirs of K.Ananda Rao. Further, if at all after the death of K.Ananda Rao, the plaintiffs become administrator of Kalikamba Devaru, then name of the plaintiffs would have been entered in the column no.12 of the RTCs of plaint A schedule properties. But the RTCs does not discloses the name of the plaintiffs as cultivator. Only on the basis of Ex.P3 and P4 RTCs which is

of the year 1994-95, this court can not infer that, plaintiffs are in possession and enjoyment of plaint A schedule property. Hence, this court is of the opinion that, the plaintiffs have failed to prove that, they are in possession and enjoyment of suit A schedule property. Accordingly, I answered **Issue No.1 and 4 in the Negative.**

12. Issue No.2 and 3 :- Since these issues are interconnected, they are taken up together to avoid repetition of facts.

Further, it is the case of plaintiffs that, there exist a road way of 3 meter width in plaint A schedule property which runs from Karimajal to Patrakodi locality. The plaint A schedule property is a private property. Hence, the defendants have got no manner of right to widen the said 3 meter roadway or to any portion of the said road in the plaint A schedule property. But the defendants no.1 to 5 have engaged service of defendant no.6, to form a concrete road in the said 3 meter roadway. In the 3rd week of March 2012, defendant no.6 made an attempt to widen the 3 meter roadway into 7 meter by spreading earth on either side of the plaint A schedule property and closed the existing water tank by the side. Immediately the plaintiff had objected the same before defendants no.1 to 5. But at the instant of defendants no.1 to 5 the defendant no.6 and his men forcibly trespassed into the plaint schedule property and begun to widen the road to 6 meter to 7 meter. After passing an order of

injunction of this court, the defendants have formed concrete road to a width of 3 meter.

13. In support of their case the plaintiff no.2 has relied on Ex.P5 to P12, P17 to 38, P40 to P44 documents. The Ex.P5 and P19 discloses that, on 29.03.2011 K. Ananda Rao gave First information against defendant no.5 with respect to damage of culvert and illegal formation of road in item no.1 of plaint A schedule property. The Ex.P17 discloses that, on 19.03.2012 the plaintiff no.2 gave first information to Puttur Police Station to warn the defendants not form road in the item no.1 of the plaint A schedule property. The Ex.P7 discloses that, on 24.03.2012 after grant of order of interim injunction in the present suit, the plaintiff no.1 has issued notice to defendants. The Ex.P8 discloses that on 30.11.2011 the defendant no.2 issued notice to Deputy Commissioner not to grant any funds for formation of road in item no.1 of suit A schedule property. The Ex.P10 is the copy of the estimation of Jilla Panchayath Dakshina Kannada for repair of Kokkarabettu- Karimajalu road of Kedila Village. Further it discloses that, an amount of Rs.6.65 Lakh has been sanctioned for repair of above said road. The Ex.P11 to P13 discloses that, on 20.03.2012 the plaintiff no.2 has issued legal notice to defendants not to widen the existing road in the plaint A schedule property. Ex.P22 to 29 and P33 to P38 and P44 Photographs and CD shows the formation and repair of one concrete road. The Ex.P30 to P32 discloses that, after the grant of temporary injunction order the plaintiff no.2 gave first information to Puttur Police Station against

defendants to stop the construction work in the plaint A schedule property and they have issued an endorsement. All these documents disclose that, the defendants have repaired and concreted the Kokkarabettu- Karimajalu road of Kedila Village. Except few first information of K.Ananda Rao and plaintiff no.2 nothing is placed before the court to prove that, the said road runs in the plaint A schedule property. Further as per Ex.P9 Sketch a panchayath road runs adjacent to the property of K.Ananda Rao. In the Ex.P16 sketch no road is forthcoming. As per Ex.P39 a proposed road in the property of Kalikamba Devaru which is shown as item no.1 of the plaint A schedule property is shown. But the materials placed before the court are not sufficient to prove the formation of road in plaint A schedule property as pleaded in the plaint. Accordingly, I answered **Issue no.2 and 3 in the Negative.**

14. Additional Issue No.1- It is the case of defendant no.5 that, suit is not maintainable without previous Sanction from Zilla Panchayath as per Section 295 (2) of Karnataka Panchayath Raj Act 1993. On perusal of Section 295 of the said Act, the same read as follows:-

Section 295 (2) :- No, suit or other legal proceeding shall lie against a Chief Executive Officer or Executive Officer or Secretary or any other officer of the Government or a Grama Panchayath or Taluk Panchayat or Zilla Panchayath or any member, officer, servant or agent of such Grama Panchayath, Taluk Panchayath or Zilla Panchayath acting under its direction in respect of anything done or purporting to have been lawfully

done and in good faith under this Act or any rule, regulation, bye-law or order made thereunder except with the previous sanction of the Zilla Panchayath or such officer as the Zilla panchayath may specify.

15. On careful perusal of Section 295 (2) of Karnataka Panchayath Raj Act 1993 previous sanction of Zilla Panchayath or such officer as the Zilla panchayath may specify is necessary. The plaintiffs have fail to produce any material before the court to show that, they have complied with statutory requirement of Section 295(2) of the said Act before filing the suit. In view of the same the suit is not maintainable and the same is bared under Section 295 (2) of Karnataka Panchayath Raj Act 1993. Accordingly, I answered **Additional Issue no.1 in the Affirmative.**

16. **Issue No.5:-** For the reasons stated in discussing Issue No.1 to 4 and additional issue no.1, I proceed to pass the following:-

O R D E R

**The suit of the plaintiffs is
hereby dismissed.**

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her, transcript revised, corrected by me and then pronounced in the open Court on this the 16th **day of April 2021**)

**(Ramya H.R)
Prl. Civil Judge & JMFC
Bantwal**

ANNEXURE**Witnesses examined for:****Plaintiffs:**

P.W. 1	Sri. Purandara	15.07.2013
P.W. 2	Sri. Aboobakkar	27.04.2017

Defendants: Nil

Documents marked for:**Plaintiffs:**

Ex.P.1	Copy of the Order passed in R.A. No.1/2006
Ex.P.2	Decree passed in O.S. No.109/1995
Ex.P.3 & P.4	RTCs
Ex.P.5	Copy of the complaint
Ex.P.6	Statement
Ex.P.7 & P.8	Complaints
Ex.P.9	Sketch
Ex.P.10	Work order
Ex.P.11	Legal notice
Ex.P12 & P13	Postal receipts
Ex.P14 & P15	RTCs
Ex.P16	Sketch
Ex.P17	Complaint
Ex.P18	C.C of the Order passed in R.S.A.1332/2007
Ex.P19 & P21	Police complaint & Postal acknowledgments
Ex.P22 to 29	Photographs and CD
Ex.P30	Complaint
Ex.P31 & P32	Complaint and endorsement
Ex.P33 to P38	Photographs and C.D
Ex.39	Spot sketch
Ex.P40	Receipt
Ex.P41	Spot Mahazar
Ex.P42	Report given by surveyor
Ex.P43	Endorsement
Ex.P44	Photos
Ex.P45	C.D.

Defendants:

Ex.D1 Sketch

**Prl Civil Judge & JMFC.,
Bantwal**