



**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
NAVALGUND**

Present : Sri. Naveen F. Dsouza
B.B.A., L.L.B., (Spl).,
Civil Judge and JMFC., Navalgund.

Original Suit No.226/2025
Dated this the 23rd day of April, 2026

Plaintiff 1. Mallikarjun S/o Basappa Bhandiwad
 Age:77 years, Occ: Agriculture
 R/o Bhadrapur, Taluk: Annigeri
 Dist: Dharawad
(By Sri.CCA-Adv.,)

Versus

Defendants 1. Shankrappa S/o Ramappa Kabanur
 Age:55 years, Occ: Agriculture
 R/o Bhadrapur, Taluk: Annigeri
 Dist: Dharawad & others.
(By Sri. MSH-Adv.)

PARTIES TO I.A.No.1

Applicant 1. Mallikarjun S/o Basappa Bhandiwad
 (plaintiff)

Versus

Opponent 1. Shankrappa S/o Ramappa Kabanur &
 (Defendants) Others.

ANNEXURES

i	Provision of application	U/o.39 R.1 & 2 R/w S.151 of CPC.
ii	Relief sought	T.I.
iii	The date of application	21.07.2025
iv	Number of the application	1
v	The date of objections	25.03.2026
vi	The date of order	10.04.2026

ORDER ON I.A.NO.1 FILED BY THE PLAINTIFF U/O.
XXXIX RULE 1 & 2 R/W SEC. 151 OF CPC.

The application of the plaintiff is coming for consideration under the provisions of Order XXXIX Rule 1 and 2, wherein the plaintiff has sought to restrain the defendants and their agents from causing obstructions to the possession of the plaintiff over the suit property and for the reasons undermentioned the application has been disposed of.

SYNOPSIS:

2. The Plaintiff is before this court seeking to declare the suit property as easement of necessity and further to restrain the defendant from causing obstructions to the possession of the plaintiff over the suit property. Through the present application the plaintiff has sought to restrain the defendants from causing obstructions to the possession of the plaintiff over the suit property.

3. To the contrary the defendants have opposed the existence of the pathway and pleaded that the Plaintiffs have alternative pathwY in their possession and a new easement cannot be permitted as pleaded by the plaintiff which would cause loss to the defendants and hence the suit being filed upon false ground is sought to be dismissed. Likewise the application having not disclosed all truthful facts is sought to be dismissed.

4. Having heard the contentions of the plaintiff and on perusal of materials placed on record, this court has narrowed down the dispute to following points and they have been answered accordingly for the underlying reasons.

Sl. No.	Points	Answers
1.	Does the plaintiff/applicant make out prima facie case for the grant of temporary injunction?	In the Affirmative
2.	Does the balance of convenience incline	In the Affirmative

	in favour of the plaintiff/applicant?	
3.	Does the plaintiff suffer irreparable loss or injury, if an order of temporary injunction is not granted?	In the Affirmative
4.	What order?	As per final order, for the following;

REASONS

5. **Point No.1 to 3:-** For the sake of brevity all 3 points are taken up together for discussion. The gist of the case is contained in the synopsis, however, the brief facts necessary for the adjudication of the application are that, the plaintiff has pleaded that he is the owner in possession of the land bearing Survey No. 645/2 to an extent of 7 acres 19 guntas of Annigeri and the defendants are stated to be the owners and occupants of land bearing Survey No. 646/1, 646/2, 646/3. That the plaintiff to access the land bearing Survey No. 645/2, has to pass through the portion identified as ABCD which is the cart way existing towards the western direction of land bearing Survey No. 646.

6. The plaintiff has described his cart-way to be of 8 feet in width east-west direction and to be the only cart-way available for the plaintiff to access his land and the defendant are causing obstructions to the possession of the plaintiff for the movement of tractors, bullock carts and also the ingress and egress of the plaintiff. That despite of several requests on 02.06.2025 the obstructions never ceased and a complaint has come to be lodged. Despite this, the defendants have not heeded the request of the plaintiff and finally being constrained, the plaintiff is before this court with the suit seeking to declare the suit property as his easement of necessity and in consequence a suit relief of injunction restraining the defendants from causing obstructions to the possession of the plaintiff.

7. To the contrary the claim of the plaintiff is opposed by the defendants. However the ownership and possession of the lands is admitted. It is pleaded that towards the eastern direction of land bearing Survey No. 646 exist a cart way through which the plaintiff has been accessing the Annigeri Shetty cart-way and it is pleaded that there exist a cart way towards the western direction of land bearing 645/2 and 646. It is pleaded that this cart way joins the Annigeri Shetty cart way and through which the plaintiff is moving his tractors and bullock carts and he is accessing his land.

8. Also the other adjoining owners towards the eastern direction of the land of the plaintiff. It is stated that the alternative way or the pathway for the plaintiff is in existence towards the northern direction of the land bearing Survey No. 645/2 in between land bearings 644/2 and 3, through which the plaintiff can access his land and he is accessing his land. That these facts are not disclosed and understating these facts the plaintiff is intending to create a new right of way from the land of the defendants.

9. That the defendant no. 7 in the year 2017-2018 has procured the bore well on the land bearing Survey No. 646/1 towards the eastern direction and the plaintiff is intending to destruct this bore-well by passing over the same. Hence if the injunction is granted or if the suit is decreed, then it would cause loss to the bore-well erected by the defendant wherein he will not be able to cultivate his lands. It is also pleaded that the adjacent owners of the land of the plaintiffs have been using this pathway situated towards the southern direction of the land of the plaintiffs and has been used since age old days and hence when the plaintiff has a pathway which is in existence he cannot

seek to create new pathway claiming it as a necessity. Thus sought for the dismissal of the suit as well as the application.

10. Having given consideration to the pleas and the submissions of the rival sides, the learned counsel for the plaintiff would rely upon the photographs and the map wherein he would state the existence of the road tracks and the tractor tyre tracks could be seen, which would suffice a prima facie existence of a pathway or cart way for the plaintiff.

11. To the contrary, the learned counsel for the defendant would also rely upon the photographs, wherein he would state that the road which the plaintiff is claiming is in fact a place where the defendant no. 7 has erected a bore well under the scheme of government and the plaintiff is likely to walk all over the bore well to cause loss for the defendants and that there is no pathway existing for the plaintiff. In fact, it is pleaded that the pathway exist towards the eastern direction of both the land of the plaintiffs and defendants and the plaintiffs are not intending to access this existing pathway which they have been accessing since of their ancestors and is in access by other occupants as well.

12. Rival sides have submitted the survey map of the concerned lands. On perusal of this map, the Bhadrapura Road is in existence towards the western direction of land bearing Survey No. 652 and also towards the southern direction of land bearing Survey No. 652. The land of the defendants bearing Survey No. 646 is situated towards the eastern direction of Survey No. 652. As per the plaintiff the suit property cart way is in existence at the intersection point of land bearing survey No. 652 and 646. However, as per the defendants, the pathway for

the cart way for the plaintiff is in existence towards the eastern direction of land bearing survey No. 646 as well as 645.

13. Having given consideration to the pleadings as well as the documents, the only document which the court can rely upon at this phase is the Map. Rival sides have furnished the map. However, the quality and the visibility of the numerical of the lands and its survey numerical is only visible in the document furnished by the plaintiff. The document furnished by the defendant is though certified copy has been submitted by the authorities blindly without even ascertaining the visibility of the the numerical to a prudent human eye or not.

14. On perusal of the map, at the intersection point of land bearing Survey No. 652 and 646, there exists a certain arrangement which is identified as a way and also towards the eastern direction of land bearing Survey No. 646, there is a passage which is described as a river or a water way/stream. In the photographs submitted by the defendants the same is forthcoming as a stream. This stream as per the defendant is the pathway available for the plaintiff accessed by him and his ancestors from time memorial. Certainly the question in this application that the court has to consider is existence of prima facie case.

15. When the survey map produced by the rival sides is taken into consideration there is a certain identification mark as to the existence of a pathway. Hence, this Court finds that there is a prima facie case made out by the plaintiff. The existence of alternative pathway and its access for ingress and egress for a continuous period of time is a matter of trial. However, when the plea of the plaintiff is prima facie supported by a public

document, this Court opines that the plaintiff has demonstrated the existence of a prima facie case.

16. The map would also disclose that the land bearing Survey No. 645 is bounded by other survey lands and has no access for a precise cart way or pathway to access the Badarapura road or the other sub-cart ways. Hence if the court fails to intervene, then the plaintiff is likely to suffer to access his land. The plaintiff having demonstrated a prima facie case and also as the court has observed that the land of the plaintiff is between other lands, if the restraint is not granted then the plaintiff would suffer major loss and would be restrained from accessing his land.

17. However, so far as the claim of the defendant is concerned, as to the existence of the alternative pathway is a matter of trial. Hence there is a balance of convenience as of now because the only objection of the defendant is that if the pathway as pleaded by the plaintiff is permitted then it is likely to cause harm to the bore well erected by the defendant no. 7. If this is taken into consideration and the interference by the court is not granted or the restraint is not granted, then the plaintiff is likely to suffer a loss more than the defendant and if the restraint is granted, then it could be made subject for certain conditional use and conditional restraint which could meet the grounds until the adjudication of the suit.

18. Additionally the rival sides have pleaded directions and have annexed the hand sketch but the directions are not found in the sketch of the Plaintiff and the directions of the Defendants as in the pleadings have no resemblance with the sketch. But by the map, this Court finds that having

demonstrated a prima facie case the balance of convenience lies in the favour of the plaintiff and if the intervention is not made then the plaintiff is likely to suffer a major loss rather than the defendants.

19. Hence this Court opines that the intervention is warranted when the basic ingredients are satisfied by the Plaintiff, this court opines that the Plaintiff qualifies for the relief of restraint subject to the restricted use and accordingly the **point No. 1 to 3 answered in the Affirmative.**

20. **Point No.4:-** In the result the following;

ORDER

The I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of C.P.C., is hereby allowed.

By an order temporary injunction the defendants or anybody claiming through or under them are hereby restrained from causing obstruction to the possession of the plaintiffs over the suit property/cart-way identified as ABCD at the intersection point of land bearing survey No. 652 and 646.

The plaintiff shall not cause harm or damage the bore-well of the defendant and shall act diligently while using the tenement.

The injunction order shall be in force for a period of 90 days from the date of order. However, the plaintiff shall be entitled for the extension of T.I. should he conclude his examination in chief within 90 days without

*any reasonable excuse after the settlement of
the issues.*

(Typed and transcript revised by me, formatted by the steno, corrected and then pronounced by me in the open Court on this **23.04.2026**).

(Naveen F. Dsouza)
Civil Judge and J.M.F.C.,
Navalgund.
