



IN THE COURT OF THE SENIOR CIVIL JUDGE AND

J.M.F.C., AT CHIKKANAYAKANAHALLI.

**Present:- Sri. SATISH S.T., B.Com., LL.B.,
Senior Civil Judge and J.M.F.C.,
Chikkanayakanahalli**

Dated :- This the 31st day of July, 2026

MA.No.02/2026

APPELLANTS :-

- 1.Shashikala W/o Gururaju.,
Aged about 60 years,
 - 2.Jayanna @ Dhananjaya.,
S/o Gururaju.,
Aged about 33 years,
 - 3.Dileep S/o Gururaju.,
Aged about 33 years,
All are R/o Nagenahalli,
Shettikere Hobli, C.N.Halli
Taluk, Tumkur District.
 - 4.Sadashivaiah S/o Late Puttappa.,
Aged about 68 years,
R/o Pankajanahalli,
Shettikere Hobli, C.N.Halli
Taluk, Tumkur District.
- (By Sri.BDJ., Adv.)**

// Versus //

RESPONDENTS:-

S.Gangadharaiah.,
S/o Late H.Shivalingaiah.,
Aged about 60 years,
R/o Nagenahalli, Shettikere
Hobli, C.N.Halli Taluk,
Tumkur District.
(By Sri.CR., Adv.)



Date and nature of the Order	Appeal against the order passed in OS.No.46/2026 dated 17.03.2026 passed by the Addl. Civil Judge & JMFC, C.N.Halli, Tumkur District.		
Date of institution of the Appeal	26.03.2026		
Date of disposal	31.07.2026		
Duration of the Appeal	Years	Month	Day
	00	04	05

Sr. Civil Judge and JMFC.,
Chikkanayakanahalli.

J U D G M E N T

This appeal is preferred by the appellants/defendants under Order 43 Rule 1 of CPC., praying to set-aside the Order passed in IA.No.II of OS.No.46/2026 dated 17.03.2026 by the Addl. Civil Judge and JMFC., C.N.Halli.

2. In order to avoid repetition of facts and for convenience, I refer the parties to the appeal as per their ranking before Trial Court.

The case of the plaintiff are as follows :-

3. That the land bearing old Sy.No.69, after pakkapode land bearing Sy.No.104 totally measuring 5.32 Acres of Krishnasagara Kere village originally belongs to plaintiffs grand-father Halegowda S/o Karegowda. The said Halegowda being the rightful owner in possession and enjoyment of the



said land bearing Sy.No.104 measuring 05.32 acres sold the land measuring at northern side East to West 150 yards at North to South eastern side 24 yards, western side 120 yards bounded by East: land of Kabbinada Lingegowda, West: land of Kabbinada Lingegowda, Now land of Shivanna, North: land of Rangappa, South: Remaining land belongs to Halegowda, Now plaintiff has sold to the 4th defendant's father Puttappa through the registered sale deed on 13.10.1930 for an valuable consideration and has delivered the possession and enjoyment of the said land to the said Puttappa the father of the defendant No.4. During the lifetime of the defendant No.4's father Puttappa, the land bearing Sy.No.69, New Sy.No.104 of Krishnasagara Kere, village has been re-poded and the land purchased by the defendants father Puttappa bears the new Sy.No.104/1 measuring 2.20 Gunta of Kere village. The land retained by the plaintiffs grand-father 03.12 Guntas of Krishnasagara Kere village. The land bearing Sy.No.104/1 measuring 02.20 guntas of Krishnasagara Kere village which has been purchased by the defendant No.4's father Puttappa and their other family properties have been partitioned by the defendant No.4 and his brothers through the memorandum of partition deed. During division of family properties, the land bearing Sy.No.104/1 measuring 2.20 Guntas of Krishnasagara Kere village has been fell to the



share of Gururaju, who is her husband. As per partition the Khatha of the said land has been changed in the name of her husband Gururaju by accepting the mutation under vide MR-No.8/2000-01 of Krisnasagarakere village. During the lifetime of appellant's husband Gururaju, they have invested huge money and manual labor and have planted coconut and areca nut plants in their said land and now the coconut trees and areca nut trees grown up in the said land are aged about more than 35 years and are giving much yielding. They have dugged bore-well in our said land bearing Sy.No.104/1 measuring 2.20 Guntas of Krishnasagara Kere village for the purpose of irrigating the coconut and areca nut trees grown up in their said land. Her husband Gururaju died about 1 1/2 years back and after the death of her husband Gururaju, the revenue documents of the said land have been changed in her name by accepting the mutation under vide MR.No.H9/2023-24 of Krishnasagara Kere village on pavathivarasu. Thus herself and her sons, the defendants No.1 and 2, becomes the rightful owners in possession and enjoyment of the said land bearing Sy.No. 104/1 measuring 2.20 guntas of Krishnasagara Kere village. There exits road from Pankajanahally Kere Angala all along the land in Sy.No.104/2 of Krishnasagara Kere village to reach the land of the defendants bearing Sy.No.104/1 measuring 2.20 Guntas



of Krishnasagara Kere village as shown in the rough sketch annexed to the written statement which is denoted as ABCD in the rough sketch. From the date of purchase ie., from 13.10.1930 their predecessors in title are using the said ABCD 15 feet width road to reach the land bearing Sy.No.104/1 measuring 02.20 guntas of Krishnasagara Kere village all along the suit schedule property land bearing in Sy.No.104/2 of Krishnasagara Kere village. They are using the said ABCD 15 feet width road from our predecessors in title, openly, exclusively to the knowledge of the plaintiffs and his predecessors more than 20 years to take the bullock cart, tractor for the purpose of development of their land bearing Sy.No.104/1 of Krishnasagara Kere village, ie., for soil application, menureing and for other agricultural activities. Except the said ABCD 15 width road there is no other alternative way for them to reach their land bearing Sy.No.104/1 measuring 2.20 guntas of Krishnasagara Kere village. They are having right of way over and across the said ABCD 15 ft width road all along schedule property bearing Sy.No.104/2 of Krishnasagara Kere village. They are claiming the said ABCD 15 feet width road in the land of the plaintiff bearing Sy.No.104/2 of Krishnasagara Kere village to reach their said land bearing Sy.No.104/1 of Krishnasagara Kere village. They never interfered with the possession and



enjoyment of the plaintiff of the suit schedule property except the usage of the ABCD 15 feet width road all along the suit schedule property as shown in the rough sketch. The plaintiff by suppressing the existence of ABCD 15 feet width road all along the suit schedule property as shown in the rough sketch, has filed the instant false vexatious suit and has obtained an order of temporary injunction and by taking advantage of the interim order passed by this Court, the plaintiff being politically influential, moneyed person having the support of Goonda elements, making attempts to block the ABCD 15 feet width road by digging trench on the said road. They have complained the illegal acts of the plaintiffs to the C.N.Halli Police but no fruit has been yielded. In-spite of her several requests and repeated demands, the plaintiff has not desisted and is in continuation of his illegal acts. If the same are not restrained, much injustice and inconvenience will be caused and they would be put into irreparable loss and injury. The balance of convenience lies in my favor. Hence, prays for allow the application.

4. On the other hand the counsel for the plaintiff has filed objection to IA.No.II 39 rule 1 and 2 and contended that the land bearing old survey number after the pakkaphode New Sy.No.104 extent 05.35 guntas of Krishnarajasagarakere village originally belongs to plaintiff's grand-father is not



totally correct, but it is true to the extant that the defendant No.2 and 3's grand-father and father-in-law of the defendant No.1 was purchased the land in Sy.No.104 measuring at the northern side East to West: 150 yards and North to South eastern side 24 yards, Western side 120 yards totally measuring acre 02.09 guntas but the defendants have colluding with the Revenue and Survey Officials have created the documents to the excess extant of 02.20 acres in order to knock of the plaintiff's property. The defendant No.4's father Puttappa during his lifetime the Sy.No.69 and Sy.No.104 has been rephoded and the land purchased by the defendant No.4's father bears new Sy.No.104/1 measuring 02.20 guntas and the land retained by the plaintiffs grand-father bears new Sy.No.104/2 measuring 3-12 guntas is not totally correct, the Sy.No.69 is not pakkaphoded only Sy.No.104 has been phoded as Sy.No.104/1 and 104/2. The exist road from Pankajanahalli Kere Angali all along the land in Sy.No.104/2 of Krishnarajasagara Kere to reach the defendant's land as shown in the rough sketch is totally false and incorrect. There is no road or kharab is in existence in the Pankajanahalli Kereangala much less in the land in Sy.No.104/2, then the question of using the imaginary road by the defendants does not arise. The defendants are having the kharab road commencing from old Shettihalli village, New J.C.Pura village



to reach their land since time immemorial both plaintiff and defendants are using this kharab road since from their predecessor in title to take their bullock cart, tractor and for agricultural operations. The rough sketch produced by the defendants is totally false and incorrect and the same is not in accordance with survey records or village map. There is no kharab road is situated or in existence in the suit schedule property at any point of time, then the question of using the imaginary 15 feet width road in the suit schedule property by the defendants does not arise. The defendants have not approached this court with clean hands to have equitable relief of injunction in the plaintiff's suit. The defendants have filed this application with an intention to harass the the helpless law abiding plaintiff. If the application is rejected no prejudice will cause to the defendants, on the other hand if the application is allowed than the plaintiff will be put to irreparable loss and injury which cannot be compensated by any means and the valuable plaintiff's schedule property will become wasted. Hence, prays to dismiss this application.

5. After hearing the arguments on I.A.No.II the learned Addl. Civil Judge and JMFC, C.N.Halli has dismissed the IA.No.II. Being aggrieved by the same, the defendants have preferred this appeal on the following;



GROUND S

6. The order passed by the Trial Court is opposed to law, weight of documents and probabilities of the case and also against to law and natural justice and in equitable on facts. Though the appellants/defendants have proved the prima-facie case and balance of convenience in his favor. The Trial Court has erred in coming to the conclusion that the prima-facie. The Trial Court at the out set has failed to understand the nature and scope of the provisions of under Order 8 Rule 6A of CPC. The order of the Trial Court is contrary to the records produced by the parties and the law of the land and the reasons given by the Trial Court are imaginary and untenable in law. The Trial Court has failed to appreciate the document produced by the defendants clearly establishes the defendants valid right of way over and across the suit schedule property. As per the decisions of the Hon'ble Apex Courts, the findings should not be given on the merits of the case while disposing of the interim application but the Trial Court has erred in allowing the application by touching the merits of the case. The Trial Court has made out its own case in dismissing the application. The Trial Court has erred in not disclosing the several decisions and citations submitted by the defendant council during the course of arguments. As per the verdicts of the Hon'ble Apex Courts, the genuineness



of the documents should not be scrutinized while disposing of the interim application but the Trial Court has passed the impugned order by disputing the documents produced by the appellants/defendants and the order is contrary to well established principles of law. The Trial Court has failed to notice the hardship and irreparable loss that the appellants/defendants is going to be sustained. The order passed by the Trial Court is arbitrary, capricious and in disregard of sound legal principles and without considering all the relevant documents produced by the appellants/defendants which are on record. The order passed by the Trial Court by giving a finding on controversy have the effect of prejudicing the issue in the main suit forming the main cause of action is liable to be set-aside. By this submission they prays for allow this appeal.

7. After receiving the TCR, I have heard the arguments from both the parties.

8. To decide this appeal following points arises for my consideration.

1. Whether the order passed by the Trial Court in IA.No.II is illegal and liable to be set-aside ?
2. What order?

9. My answer to the above points are as follows;

Point No.1: In the Negative



**Point No.2: As per final order,
for the following;**

R E A S O N S

10. **Point No.1:-** The plaintiff has filed this suit for permanent injunction restraining the defendants and their men from peaceful possession and enjoyment and also restrain the defendants from forming the road in the suit schedule property. The defendants have appeared through their Counsel and resisted the claim made by the plaintiff. They have also sought for counter claim restraining the plaintiff from using ABCD 15 feet road as shown in the written statement schedule sketch. In this case the defendants have filed another Miscellaneous Appeal in MA.No.01/2026 filed against the order passed in IA.No.I by the Trial Court. That Appeal is also posted for orders for today and I have considered the documents produced by both the parties in both the cases. Before the Trial Court the defendants have filed IA.No.II praying to restrain the plaintiff from using the ABCD 15 feet road which is shown in written statement schedule sketch. After hearing the both side the Trial Court has dismissed the IA.No.II. Felling aggrieved by the order passed in IA.No.II the defendants have filed this Appeal. It is the specific case of the defendants that, they are having their property in Sy.No.104/1 measuring 02 acres 20



guntas of Krishnasagarakere village. This property is situated towards Northern side of plaintiff's property, there is a 15 feet road in the suit property which is shown in the rough sketch shown as ABCD. This road has been using by defendants and villagers since from more than 20 years. They are taking their bullock carts and tractors for the purpose of development of their land bearing Sy.No.104/1, except the said 15 feet road there is no other alternative way for the defendants to reach their land. The defendants have also sought for easementary right in the suit property. In support of defendants case, they have produced copy of sale deed dated 13.10.1930, copy of hand written RTC extracts of suit survey number, copy of sketch, copy of Akarband, RTC extracts of defendants properties for the year 2025-26 and copy of sketch. From these documentary evidence it is not possible to hold that there is a 15 feet road in the suit property as shown in the written statement schedule sketch.

11. It is the specific case of the plaintiff that he is lawful owner and possessor of the suit property. It was allotted as his share in the family partition, after that mutation has been effected. The defendants without having any right, title and interest over the suit property are trying to make road in the suit property to reach their land which is situated towards Northern side of suit property. In support of plaintiff's case,



the plaintiff has produced copy of partition deed, copy of hand written RTC extract, RTC extract of suit property for the year 2025-26, RTC extract of defendants property, copy of sketch and photos.

12. From these documentary evidence produced by both the parties it is clear that there is no any certified road in the suit property. In the title deed of plaintiff and defendants also there is no road in the suit property. The defendants are stating that they are using the said road since more than 20 years and they have got easement of necessity to reach their properties. To know this fact the evidence of both parties are required. At this stage it is not possible to hold that defendants have got easementary right over the suit property. Prima-facie the defendants have failed to prove that there is a road in the suit property, the balance of convenience does not lies in favour of defendants. If injunction order is granted and defendants are permitted to use of plaintiff property their property will be will be damaged. Hence, the defendants are not entitled any injunction order as sought. After carefully considering the documentary evidence produced by both the parties, the Trial Court has rightly rejected the temporary injunction application filed by the defendants. The grounds urged in this Appeal are not sustainable under law. Hence, call for interference by this Court with respect of order passed



in IA.No.II is not warranted. **Hence, I have answered Point No.1 in the Negative.**

13. **Point No.2:-** In view of various reasons and discussions made on point No.1, I proceed to pass the following;

ORDER

The appeal filed by the appellants/defendants is hereby dismissed.

The Order passed in IA.No.II under Order 39 Rule 1 and 2 of CPC., dated 17.03.2026 in OS.No.46/2026 by the Addl. Civil Judge and JMFC., C.N.Halli is hereby confirmed.

No order as to cost.

Sent copy of this order to Trial Court.

(Dictated to the Stenographer, Computerized and print-out taken by him, Corrected, signed and then pronounced by me in the Open Court on this the 31st day of July, 2026).

(SATISH S.T.)
Senior Civil Judge & J.M.F.C.,
Chikkanayakanahalli.