

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

**PRESENT: Smt.Aishwarya Chidanand Pattanshetti, B.COM, LL.M.,
Civil Judge & J.M.F.C., Hangal.**

O.S.No.393 of 2025

DATED THIS THE 16th DAY OF APRIL 2026

Plaintiff		Smt.Girijamma W/o Basavarajappa Hotel, Age: 60 years, Occ: Agriculturist R/o: Hulagaddi village, Tq: Hangal, Dist: Haveri.
		(By Sri.S.L.Banakar - Adv.,)

V/s.

Defendants	1	Sri.Shivanandappa S/o Dyavappa Barki Age: 48 years, Occ: Agriculturist R/o: Hulagaddi village, Tq: Hangal, Dist: Haveri and 6 others.
		(Def.No.1, 2, 4, 6 by Sri.P.M.Byatnal - Adv.,) (Def.No.3 by Sri.S.V.Muradannanavar – Adv.,) (Def.No.5 & 7 Exparte)

PARTIES TO I.A.No.I

Applicant/ Plaintiff	1	Girijamma W/o Basavarajappa Hotel
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V/s.

Opponents/ Defendants	1	Shivanandappa S/o Dyavappa Barki 6 others.
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I	Provision under which the application is filed	U/o.XXXIX Rule 1 & 2 of C.P.C.,
II	Relief sought for	Temporary injunction
III	Date on which the application is filed	06-11-2025
IV	Number of application	I.A.No.I
V	The date of which objections filed by the different opponents	12-01-2026 and 12-01-2026
VI	Date on which the order was passed on said application	16-04-2026

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.

ORDERS ON I.A.No.I FILED U/O XXXIX RULE 1 AND 2
OF CPC

The applicant/plaintiff has filed this application U/o.XXXIX Rule 1 & 2 of C.P.C., seeking to restrain the defendants or anybody claiming under them from interfering with the peaceful usage of the plaintiff over the suit “ABCD” from west to east schedule pathway as shown in the hand sketch to reach her agricultural lands till the disposal of the suit by way of ad-interim temporary injunction.

2. In the affidavit annexed to the application, the applicant/plaintiff by reiterating facts asserted in the plaint, has deposed to the facts that the plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect of the suit schedule property. The suit schedule property as shown in hand sketch map as “ABCD” bearing R.Sy.No.52/1 measuring 2 acres 18 guntas out of the same, west to east direction as mention as “ABCD” pathway is the suit schedule property.

(b) The plaintiff and defendants are agriculturists and they are residing in the Hulagaddi village as well as Kalaguddi village and both are known to each other. Since from 12-13 years the plaintiff is in peaceful possession and enjoyment of the R.Sy.No.52/1 measuring 2 acres 18 guntas by growing arecanut trees by leaving 6ft pathway as “ABCD” and out of said 6ft, the 3ft belongs to the property of plaintiff and other side owner of lands bearing R.Sy.No.32 has left 3ft. The said 6ft pathway is used by plaintiff, defendants and other agriculturists to reach their lands. Recently, on 17-10-2025 the dispute arose between the plaintiff and defendants and after dispute, the defendants are restraining the plaintiff and other agriculturists from the usage and enjoyment of 6 ft

pathway to reach their lands, which is shown as “ABCD” in the hand sketch map. On these grounds, the plaintiff has prayed to allow the instant application.

3. In response to suit summons, except defendant No.5 and 7, the remaining defendants have appeared through their counsels and filed their separate objections to the instant application. The defendant No.1, 2, 4 and 6 have filed objections and in the said objections denied the averments of the plaint and specifically contended that, the plaintiff without any reasons again and again is causing obstruction to the defendants by influence of political persons. The plaintiff has filed case against the 1.Girishgouda S/o Ramanagouda Chikkachowti, 2.Vasantha S/o Bangareppa Badigera, 3.Hanumanthappa S/o Fakkirappa Talawar, 4.Megharaj S/o Ningappagowda Patil, 5.Arun S/o Mukappa Barki, 6.Paramesh S/o Mallappa Tallur, 7.Mahadevappa S/o Guddappa Harijan, 8.Malatesh S/o Shivappa Saravesh 9. Gurupadappa S/o Ajjappa Banagigera, 10. Malatesh S/o Mahadevappa Barki, 11.Subhash S/o Shivappa Barki, 12.Sannayallappa S/o Fakkirappa Talawar, 13.Ganesh S/o Ramappa Barki. Further specifically contended that, persons who are named in the complaint and the persons who are named in the suit are different.

(b) Further, the plaintiff filed this application with intention to harass and insult the defendants and also cause loss to the defendants and to threaten the defendants by filing criminal as well as civil cases against them and intentionally to cause loss to the defendants. The suit of the plaintiff is not maintainable under any law or facts of the case. On these grounds, the defendant No.1, 2, 4 and 6 have prayed to dismiss the application with costs in the interest of justice and equity.

4. The defendant No.3 has independently filed separate objections to the instant application and denied the averments of the plaint and specifically contended that, the plaintiff filed this suit by creating false and concocted story and as such, the suit is not maintainable under facts and circumstances of the case. Further, the defendant No.3 specifically contended that, the plaintiff filed this suit for ABCD pathway east-west direction of 6ft in R.Sy.No.52/1. But in the same way, with respect to land bearing R.Sy.No.52, Sri.Shivanandappa S/o Puttappa Angadi and others have filed suit against the plaintiff, defendant No.3 of the present suit in the same Court in O.S.No.398/2025 and said suit with respect to the permanent injunction and this Court has already passed order.

(b) Now again the plaintiff filed this suit for permanent injunction and as such the order on instant application has already been considered by this Court, hence, the instant application is not maintainable under the law and facts. On these grounds, the defendant No.3 prays to dismiss the instant application as well as suit.

5. Having heard and on perusal of the materials on records, the following points that would arise for my consideration:

- 1. Whether the plaintiff has made out prima-facie case?**
- 2. Whether the balance of convenience lies in favour of plaintiff?**
- 3. Whether the comparative hardship and injury caused to the plaintiff is more when compared the same to the defendants?**
- 4. What order?**

6. My findings on the above points are as under;

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;**

:- R E A S O N S :-

7. **Point No.1 to 3:-** Since, these three points are interconnected with each other, the determination of which requires common facts and materials. Hence, these points are taken together for common discussion, in order to avoid repetition of facts. Admittedly, the plaintiff has filed the present suit for the relief of permanent injunction and other reliefs against the defendants in respect of the suit schedule property.

8. Before having discussion on the merits of the application, it is just and necessary to bear in mind that, the interim order of injunction would be granted as an aid to the main relief. It is pertinent to note that, at this budding stage of the proceedings the Court need not conduct a mini trial. It is also necessary to bear in mind that, even after placing of the requisite materials in respect of aforesaid three ingredients, the Courts are required to consider the conduct of the parties, their approach in seeking equitable relief and has to exercise its discretionary power while granting an order of Temporary injunction as per the provisions of Specific Relief Act.

9. Perused all the documents produced by the plaintiffs and the defendants. Before discussing the merit of

the application, it is appropriate to highlight the admitted facts of this case. There is no dispute that the plaintiff is in possession and enjoyment of Sy.No.52/1 measuring 2 acres 18 guntas and the mode of possession is mentioned as MR H10/2017 -2018 dated 14.11.2017. According to the plaintiff "ABCD" as shown in the hand sketch is the pathway and out of said 6ft, 3ft belongs to the property of plaintiff and other side owner of lands bearing R.Sy.No.32 has left 3ft. The said 6ft pathway is used by plaintiff, defendants and other agriculturists to reach their lands.

10. Per contra the defendant No.1, 2, 4 and 6 and the defendant No.3 have denied the entire averments of the application and specifically contended that, the plaintiff has filed the present application to harass the defendants. Both plaintiff and the defendants are agriculturists and as per settled principle of law, the burden is on the person who asserts, to show the existence of pathway and also prove that there is no other alternative to reach his/her agricultural lands.

11. In this regard the plaintiff has produced the RTC , photographs, CD , receipt, letter to the Tahshildar, Hangal, Village map, Police acknowledgments, copy of the exparte order on IA.No.I passed in OS.No.398/2025 dated 13.11.2025. The present application was filed by the

plaintiff alongwith the suit and the defendant No.1 to 3 and 6 had filed caveat No.49/2025 against the plaintiff and others in respect of the suit schedule property and Sy.No.30/3, 35/6, 37, 38/1, 32/2 and 32/4.

12. The 'ABCD' pathway shown by the plaintiff in the hand sketch and it involves several agricultural lands and the plaintiff has stated that out of said 6ft, 3ft belongs to the property of plaintiff and other side owner of lands bearing R.Sy.No.32 who has left 3ft. The plaintiff has clearly stated that the said 6ft pathway is used by plaintiff, defendants and other agriculturists to reach their lands. Which shows that it is a common pathway and one person cannot claim his right exclusively over it by restraining others. Whether there is an alternative pathway for the plaintiff to reach her lands is a matter of trial and at this stage of the proceedings the Court need not conduct a mini trial.

13. It is to be noted in a reported decision in **AIR 2008 Supreme Court 2291-Mandali Ranganna & Others etc., Vs. T. Ramachandra & Others**, wherein Hon'ble Apex Court it is held that:-'Besides consideration of basic elements, Court must consider conduct of parties.' The ratio held in the above decision is aptly applicable to the present case.

14. In the present case on hand the plaintiff has failed to show her prima-facie case because it is a common pathway. Prima-facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima-facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily as held in **PRAKASH SINGH V/s STATE OF HARYANA 2002 (4) Civil L.J 71 (P.H).**

15. Further the Hon'ble Supreme Court in **AIR 2010 SUPREME COURT 296-KASHI MATH SAMSTHAN AND ANOTHER V/s SRIMAD SUDHINDRA THIRTHA SWAMY AND ANOTHER-** has held that,

“ it is well settled that in order to obtain injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. If that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even, if he has made out a case of balance of convenience and irreparable loss and injury if no injunction order is granted”.

16. In view of ratio held in above said decisions and my discussions, I am of the considered opinion that, the plaintiff has not made out any prima-facie case at this stage to grant temporary injunction as prayed. When, the plaintiff has not made out any prima-facie case, then certainly balance of convenience also does not lie in favour of plaintiff. In such circumstances, if temporary injunction as prayed is granted in favour of plaintiff, the irreparable hardship will be caused to the defendants than the plaintiff. With these observations, I answer the Point No.1 to 3 in the NEGATIVE.

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

ORDER

***I.A.No.I filed by the plaintiff
U/o.XXXIX Rule 1 & 2 of C.P.C.,
is hereby rejected.***

***The parties shall bear their
own costs.***

(Dictated to Stenographer, directly typed by him on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 16th day of April - 2026)

***(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.***