

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,**  
**HIREKERUR**

**PRESENT:-** **K.N. Shivakumar, B.Sc., (Agri) L.L.M.,**  
**Civil Judge and JMFC,**  
**Hirekerur.**

**O.S. No.318 OF 2021**

**DATED THIS THE 22<sup>nd</sup> DAY OF FEBRUARY - 2022**

**Plaintiff** : Krishna naik S/o Venkannaik Mallenahalli,  
R/o: Chikkerur, Tq: Hirekerur, Dist: Haveri.

***(By Sri. G.V. Kulkarni - Adv.)***

**Defendants:** Basavaraja S/o Eshwarappa Lekkappalavar,  
R/o: Kote Oni, Chikkerur, Tq: Hirekerur,  
Dist: Haveri, and six others.

***(D., by Sri. B.N. Banakar – Adv.)***

**PARTIES TO I.A. No.I**

**APPLICANT :-** Krishnaik S/o Venkannaik Mallenahalli.

-Vs-

**OPPONENTS:-** Basavaraja S/o Eshwarappa Lekkappalavar.  
And others.

**ORDERS ON I.A. No.I**

This is the suit filed by the plaintiff against defendants for permanent injunction.

2. IA No.1 is filed by the plaintiff under order 39 rule 1 & 2 of C.P.C seeking an interim order of temporary injunction against the defendants to restrain them from obstructing the plaintiff to use “BC” road for carrying the bullock cart, tractor and other agricultural equipments to his

land bearing R.S.No.265 which is situated on the western side of the Government tank.

**3.** The suit schedule property is the road/way situated on the eastern bund of the village tank of Chikkerur village, Hamsabavi Hobali, Hirekerur taluk, Dist: Haveri.

**4.** It is the case of the plaintiff that, he is the owner and in possession and enjoyment of the property bearing R.S. No.265 measuring 4 acres 14 guntas of Chikkerur village. He used to access his said land through the way over the bund of Government tank situated on the eastern side of his property, which is described in the hand sketch annexed to the plaint. On the eastern side of the said tank bund the property of the defendants is situated. The plaintiff and his ancestors have been using the said "BC" road for carrying the bullock cart, tractors and other agricultural equipments to his land on the western side of the said tank. Except the said way there is no other access to his land. The defendants though not having any personal right or interest over the said tank bund and the "BC" way, they are obstructing for the movement of the plaintiff and his bullock cart, tractors etc., over the "BC" way. Hence, the plaintiff is constrained to file this suit. During the pendency of this suit, to avoid the obstruction of the defendants to the use of said "BC" way by the plaintiff, the plaintiff has filed this application for an interim order of temporary injunction against the defendants.

**5.** On the other hand, it is the case of the defendants that the plaintiff or his ancestors have not been using the

said "BC" road or way. There is no such way or road on the said tank bund. The width of the said tank bund is only 4-5 feet. As such, there cannot be any bullock cart road and tractor road. Beneath the said tank bund there is a tube or water canal for the flow of water from the said tank to the land of the defendants and others situated on the eastern side. If any bullock cart and tractor movement is allowed over the said tank bund, the said tube or water canal may get damaged, thereby the flow of water to the lands of the defendants and others would be obstructed. Further the defendants themselves though having their agricultural lands on the eastern side of said bund, they are not using said bund as road for the access to their lands. Rather, they used access their lands through a way formed by them bellow the said tank bund in their own lands. Further the ancestors of plaintiff use to have access to their lands in said R.S. No.265 through the western bund of said tank which the described as "GBCJ" in the hand sketch annexed to the western statement. That apart there is also an alternative way for the access of plaintiff to his land on the eastern edge of Kunti Gudda in R.S. No.271 which is shown with "KL" in the hand sketch and after the "KL" way there is a way on the southern side of R.S. No.269 which is shown with "LEF" in the hand sketch. It is through this way the ancestors of the plaintiff used to have access to their land in the said R.S. No.265. The plaintiff with the bad intention of harassing the defendant filed this suit claiming a false way or road over the said small tank bund. Hence, the plaintiff is not entitled to

get the relief sought for in this suit, much less the relief under this application.

**6.** Now the following points arise for consideration;

1. Whether the plaintiff has made out a prima-facie case in his favour?
2. Whether the balance of convenience lies more in favour of the plaintiff?
3. Whether there is likelihood of irreparable loss or injury, if temporary injunction is denied?
4. What order?

**7.** Heard arguments of counsel for both the side. Now, findings of the court to the above issues are as follows:

**Issue No.1 : In the affirmative.**

**Issue No.2 : In the negative.**

**Issue No.3 : In the negative.**

**Issue No.4 : As per the final order for the following.**

### **REASONS**

**8. Point No.1**:- I have already stated the sum and substance of case of both the parties. On careful scrutiny of pleadings of both the parties and the documents produced by them it appears that there is a dispute between the plaintiff and the defendants with regard to existence of "BC" road or way over the bund of Government tank situated towards eastern side of the property of plaintiff in R.S. No.265 and towards western side of the property of defendants. It is the specific case of the plaintiff that since from the period of his ancestors they have been using the said "BC" road or way

over the said tank bund. On the contrary, it is the case of the defendants that there is no such way or road over the said tank bund which is only 4-5 feet width. Further it is the case of the defendants that the plaintiff has got alternative access to his said land on the western side of the said Government tank. Similarly, he is also having an alternative access through the eastern edge of the Kunti Gudda in R.S. No.271 and the southern edge of R.S. No.269 which is shown with the alphabets "KL" and "LEF" respectively in the hand sketch annexed to their written statement. It is also the case of the defendants that the ancestors of plaintiff were using only the said alternative ways, but not the alleged "BC" way over the said tank bund. But, the plaintiff has categorically denied the said alternative way. He also contended that as the said tank bund is the property belong to Government, the defendant is not having any right or interest or locus-standi to obstruct the movement of plaintiff. Thus, there are prima-facie three issues that would arise for consideration. Firstly, Whether there is any such "BC" road in existence over the alleged tank bund. Secondly, whether there are alternative ways or access for the plaintiff to access his land in R.S. No.265. Thirdly, whether the plaintiff has been using the said "BC" way since the time of his ancestors. All these issues have to be adjudicated and decided through a full pledged trial. At this stage whether the plaintiff has made out prima-facie case for trial is to be considered. As discussed herein above the plaintiff made out a prima-facie case with regard to existence of the said suit schedule "B" road for trial.

Therefore, it can be held that there is a prima-facie case for trial in this suit. **Accordingly, the point No.1 is answered in the affirmative.**

**9. Point No.2 & 3:-** As already discussed herein above, there is dispute between the plaintiff and the defendants with regard to existence of the alleged suit schedule "BC" road over the said tank bund. In this regard, it is the specific case of the plaintiff that he and also his ancestors have been using the said road since time immemorial for carrying bullock carts, tractor etc., to his land R.S. No.265 on the western side of said tank. On the contrary, it is the defense of the defendant that there is no such "BC" road in existence over the said tank bund. In this regard, both the parties have produced the photos of said tank bund. On perusal of the said photographs prima-facie it appears that there is no such bullock cart way or tractor way over the said tank bund. Rather, the very photographs produced by the plaintiff show that there is a single path way. Further on perusal of the said photo it also prima-facie appears that as contended by the plaintiff there appear no such use of any bullock cart or tractor over the said tank bund. If at all as contended by the plaintiff they were using the said road for carrying the bullock cart and tractors since from the period from their ancestors, definitely there would have been a way or road naturally formed therein as that of the path way which is found there. It is the specific contention of the defendants that if the plaintiff is allowed to carry the bullock cart, tractor etc., over the tank bund, the said tank bund may get

damaged and consequently the water tube or water canal running bellow the said tank bund for the flow of water to the lands of defendants and others on the eastern side would be damaged or affected. Admittedly, the said tank is a public tank. The said water canal is also a public canal for flow of water to the lands of the defendants and others. Further as already discussed herein above prima-facie there appear to be no such movement of bullock cart and tractor over the said tank bund. As such, if now the plaintiff or anybody is allowed to carry the bullock carts and tractors over the said tank bund, it cannot be foreseen as to whether the same would cause damage to the tank bund and consequential damage to the said water tube or water canal. It may cause such damage or may not cause such damage. That being the case at this stage it may not be proper to take such risk by allowing the movements of such carts or tractors over the said tank bund. If any such movement is allowed and any such damage is caused to the said tank bund or water canal beneath it, it would cause greater inconvenience, damage or loss to the defendants and other persons drawing water from the said tank through the said water canal. Therefore, it appears that there would be greater inconvenience and damage to the defendants in allowing this application than that would be caused to the plaintiff. **Accordingly, points No.2 and 3 are answered in the negative.**

**10. Point No.4:-**For the reasons stated while discussing points No.1 to 3, I proceed to pass the following ;

**ORDER**

**The I.A. No.1 filed U/s 39 Rule 1 & 2 R/w 151 of C.P.C., is hereby rejected.**

**For compliance of section 89 of C.P.C or issues.**

**Call on 08-04-2022.**

*Sd/-*  
**(Sri. K.N. Shivakumar)**  
**Civil Judge & JMFC.,**  
**Hirekerur.**

**(Order pronounced in the open  
court vide separate order)**

**ORDER**

The I.A. No.1 filed U/s 39 Rule 1  
& 2 R/w 151 of C.P.C., is hereby  
rejected.

For compliance of section 89 of  
C.P.C or issues.

Call on 08-04-2022.

Sd/-  
**Civil Judge & JMFC.,  
Hirekerur.**