

Order on IA.No.1



**IN THE COURT OF THE PRL. CIVIL JUDG & I ADDL.
J.M.F.C.AT: RANEBENNUR**

**PRESENT: SHRI. ADITHYAKUMAR H.R.B.A.LL.B.,
Prl. C.J. & I Addl. JMFC.,Ranebennur.**

DATED: THIS 05th DAY OF June, 2025

ORIGINAL SUIT No.234/2023

Plaintiffs: Neelappa S/o Guddappa Thavaragundi
& another.

(Plf. By Sri. J.I.K., Advocate)

V/s

Defendants: Basamma W/o Yankappa Thumbannanavar
@ Irani & others.

(Defts. by Sri. T.S.S., Advocate)

: IA NO. 1 CAUSE TITLE :

**Applicants/
Plaintiffs:** Neelappa S/o Guddappa Thavaragundi
& another.

V/S

**Opponents/
Defendants:** Basamma W/o Yankappa Thumbannanavar
@ Irani & others.



ORDER ON IA NO. I

The application under consideration is filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w. Sec. 151 of CPC, seeking that the defendants or their agents or claiming anybody on their behalf be restrained from preventing the plaintiffs to approach their suit schedule 'A' properties through the cart road situating in between suit schedule 'B' properties till the disposal of the suit.

2. Brief facts of the case necessary for the purpose of disposing the application are as under :

2.1). The present suit is filed for permanent injunction contending that, the plaintiffs are the owners in possession of suit schedule 'A' properties and defendants No.1 & 2 are owners in possession of suit schedule 'B' properties. Between the suit schedule B properties, a cart road is existing towards east to west to approach the suit schedule A properties from Medleri to Chalageri public road. The plaintiffs have been enjoying the said road for their ingress and egress from their ancestors for last 75 years. Such being the case, the defendants have been started to interfere with the easement



rights of plaintiffs and also started to obstruct for their ingress and egress. Hence, the plaintiffs contained to file this suit.

2.2). In support of the application the plaintiff No.1 has filed his affidavit by reiterating the plaint averments and he has further contended that the defendants by taking undue advantage of innocence of the plaintiffs they are trying to interfere with their easement rights and damaging the agricultural live stocks grown in the suit schedule 'A' properties and if that is happened the very purpose of filling this suit will be frustrated and it is the plaintiffs who will be subjected to irreparable loss if the application is rejected. On the other hand, no harm or prejudice will be caused to the defendants if the interim order as sought for by the plaintiffs is granted. On these grounds, the applicants seeks that this Court be pleased to allow the application as prayed for.

3. An ad interim temporary injunction was granted and the same is extended until further order. Upon due service of the suit summons the defendants made their appearance before the court through their respective Counsel and defendants No.1 & 2 filed written statement and adopted the same as objection to the present application contending that, the present



application is neither maintainable in law nor on facts and liable to be dismissed. They denied the entire case of Plaintiffs and also contended that, an alternative way is available for plaintiffs. Hence, the rights of easement by prescription as sought by plaintiffs is not at all in existence. They also denied the ingress and egress of plaintiffs over suit 'GHIJ' road as shown in the hand sketch. They also denied the cause of action as alleged in the plaint. contending that, the present suit is filed with an intention to grab the same. Upon these grounds the defendants sought for rejection of the application.

4. Heard the arguments of learned Counsel for either side, perused the materials available on record.

5. After carefully analyzing and upon the perusal of the plaint, affidavit sworn to the application and the objection put forth by the defendants and other materials available on record, the following points arise for my consideration.

POINTS

I. Whether the plaintiffs have made out a prima facie case to grant the relief as sought for in the IA-I.?



II. Whether the plaintiffs prove that balance of convenience lies in their favour as regards IA-I.?

III. Who will be put to irreparable loss and injury if the IA-I is rejected or granted.?

IV. What order.?

6. After giving its anxious consideration and after carefully perusing the documents produced at this stage of the matter, this court answers the afore raised points as under:

Point No.1 : In the Affirmative.

Point No.2 & 3 : In the Affirmative.

Point No.4 : As per final order for the following

REASONS

7. POINT NO.1:

7.1). The provision that the Plaintiffs seek to invoke here is Order XXXIX Rule 1 and 2 of Civil Procedure Code. After perusal of the prayer sought in the IA-I it is needless to state that the case of the Plaintiffs, as regards the IA-1 falls within Clause (c) of Order XXXIX Rule 1 of Civil Procedure Code, which verbatim reads as follows :



“Where in any suit it is proved by affidavit or otherwise :-
(inter alia).

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.”

The reason why this court considers that the relief sought by way of this application falls within the ambit of clause (c) is because, the said clause seeks to protect the applicants from two apprehensions either dispossession or causing injury to the plaintiff's property; and because the relief sought by the plaintiffs by way of this application is to restrain the defendants from interference, it becomes obvious that the apprehension of the plaintiffs is that the activities of the defendants if not curtailed would cause injury to the plaintiffs possession over the suit schedule 'A' properties. Needless to state in order to successfully maintain this application the plaintiffs should first demonstrate existence of *prima facie* case in their favor.

7.2). At the very outset it would be incumbent upon this court to clarify that, the rule that before the issue of a temporary injunction, the court must satisfy itself that the plaintiffs have a *prima facie* case, it does not mean that, the court should



examine the merits of the case closely and come to a conclusion that the plaintiffs have a case in which they are likely to succeed. All that, the court has to see is that on the face of it the person applying for an injunction has a prima facie case and the court cannot go into the prima facie title and only to consider whether the Plaintiffs have made out a prima facie case for granting interim relief. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation.

7.3). Keeping the above principles in mind, let this court turn to the documentary evidence available on record. With these aspects in mind when the records are perused, it becomes evident that the plaintiffs claim prima facie on the suit schedule 'B' properties based on their easement on rights. To support their case, the learned counsel for the plaintiffs argued by placing his much reliance on the hand sketch map produced along with plaint and contended that, there is no alternate ways to approach the suit schedule 'A' properties except suit 'GHIJ'



property. Even he also relied upon the photographs to show the existence of the cart road in between the suit schedule 'B' properties. Further he contended that, though the suit 'B' properties are exclusively belongs to the defendants, the rights of the plaintiffs for their ingress and egress to approach the suit schedule 'A' property cannot be denied. Hence, the present application is deserves to be allowed by restraining the defendants from their interference as sought for.

7.4). Per contra, the learned counsel for the defendants while addressing their arguments himself admitted that, the plaintiffs are the adjacent land owners of the suit schedule 'B' properties. Further, they also admitted existence of public road towards eastern side of their respective lands. Further, also admitted that, the plaintiffs are not adjacent land owners to the public road. The counsel for defendant No.2 argued that, an alternative way is existing in the land belongs to the defendant No.1 towards southern side of his land. Instead of utilizing the said road, the plaintiffs claiming the rights in between the properties of defendants No.1 and 2. Hence, he contended that, the suit itself is not maintainable and application is liable to be dismissed.



7.5). The counsel for defendant No. 1 would argued that, the plaintiffs having no rights over the suit 'GHIJ' property and the same is common boundary of suit schedule 'B' properties. The plaintiffs having no sort of rights of easement and the present suit filed only to harass the defendants. He also contended that, a false hand sketch is prepared to file this case suppressing the true facts. He also argued that, an alternative way is existing to the plaintiffs towards northern side of suit schedule A properties. Hence, the plaintiffs failed to prove existence of their easement rights with prima facie materials. In such circumstances, the present application cannot be allowed.

7.6). It is a well settled law that, the grant of injunction is a discretionary relief, the exercise thereof is subject to the Court satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of their being entitled to the relief asked for by the plaintiffs/defendants and the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue, before the legal right would be established at the trial and further that, the comparative hardship or mischief or inconvenience which is



likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it

7.7). It is undisputed fact that, the parties to the suit are adjacent land owners and have been their respective possession. This position also can be easily visualized as depicted on the sale deeds, photographs, other documents available on record and based upon admitted pleadings. Further, as per the hand sketch map produced by the either side it prima facie demonstrates that, the suit schedule 'A' properties are situating towards eastern side of suit schedule 'B' properties which are abutting to the Madleri-Chalageri main public road. The undisputed photographs produced by the plaintiff demonstrate the existence of cart road in between two properties. It also clear that, the plaintiffs have to approach the main road either from the suit property or from the properties of any one of the defendants.

7.8). At this stage, no prima facie materials available on record to establish the alternative ways as claimed by defendants. If the contentions of defendants is true, they could have produced any materials to counter the case of Plaintiffs. In the absence of any such materials, the contention of alternate ways as



contended by defendants is matter of trial and the same cannot be determined at this stage without any full pledged trial.

7.9). The documents and undisputed photographs produced by the plaintiffs prima facie would demonstrate their claim as contended in the suit as well as in the application. Hence, at this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case in favour of the plaintiffs. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury. As such at this stage of the suit, without giving any expression on merits of the case, it is the firm opinion of the Court that, the plaintiffs have succeed to make out a prima-facie case in their favour. Wherefore this court finds no hesitation in holding the Point for Consideration No.(i) in the **affirmative.**

8. Point No.2 and 3:

8.1). The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicants.



In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicants by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

8.2). The existence of the prima facie case alone does not entitle the applicants for a temporary injunction. The applicants must further satisfy the court about the third condition by showing that they will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

8.3). The learned Counsel for the Plaintiffs argued before the Court that, since the plaintiffs have been cultivating and growing crops over the suit 'A' properties, it is necessary to protect their easement rights for their ingress and egress over the suit 'GHIJ' way and defendants objecting the same and also trying to damage the livestock and crops in the suit 'A' properties. Hence the Defendants have to be temporarily restrained, otherwise the Plaintiffs will be put to irreparable loss and hardship. Per contra, the learned Counsel for the Defendants contended that, the



plaintiffs having the alternate ways to approach their land and cart road in question no longer required for plaintiffs. But, as reasoned supra in the point No.1 that, the alleged alternate ways can be ascertained only after full pledged trial.

8.4). Admittedly it is the monsoon season and agricultural activities will be taken up. If the Plaintiffs are restrained to approach suit 'A' property from public street through suit 'GHIJ' property, their agricultural activities may be curtailed and they may sustain loss and injuries more than to the defendants. In these circumstances this Court is of the opinion that if the present application is rejected more mischief and hardship will be caused to the plaintiffs when compared to the mischief and hardship which will be suffered by Defendants if application is allowed. Considering all these aspects this Court is of the opinion that if the application is rejected, the Plaintiffs will be put to irreparable loss and hardship and the same can not be compensated in terms of money. Hence this Court has answered Point No.2 and 3 in the **Affirmative**.

9. POINT No. IV:

For the foregoing reasons and in view of the finding given by this court on Point No. I to III, this court proceeds to pass the



following:

ORDER

“I.A. No.1 filed by the plaintiffs U/O 39 Rule 1 and 2 is hereby allowed.

The defendants, their legal representatives, agents, servants or anybody acting on their behalf are hereby temporarily restrained from preventing the plaintiffs to approach their suit schedule 'A' properties through 'GHIJ' cart road situating in the suit schedule 'B' properties till the disposal of the suit.

It is hereby made it clear that, the plaintiffs shall not take any disadvantage of this order to damage the crops or plants grown in the suit schedule 'B' properties.

The parties shall cooperate for disposal of the case at the earliest.

No order as to cost.”

(Direct typed by me and then pronounced in the open court on this the 05th day of July 2025.)

Sd/-

(ADITHYAKUMAR H.R)
Prl. C.J & I Addl. JMFC.,
Ranebennur.

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