

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J M F C.
AFZALPUR

Present : Shri Vinayak Mayannavar,
B.A.,LL.B
Senior Civil Judge & JMFC, Afzalpur.

Dated: This, the 17th day of November -2025

O.S No-122/2025

Plaintiff: Girimalla S/o Shrikant Kalashetty [Teli]

[By Shri S.G.H., Advocate]

-V/s -

Defendant: The Secretary TAPCMS Afzalpur.

[By Shri S.S.P., Advocate]

ORDER ON IA NO-1 FILED UNDER ORDER XXXIX

RULE 1 AND 2 OF CPC.

The plaintiff has filed present application praying for a temporary injunction order restraining the defendant from interfering in the use of the suit way by the plaintiff pending disposal of the suit.

2. The applicant/plaintiff has contended that, the suit Vahiwat way measuring 10 feet width goes to the land of the plaintiff bearing survey No-400/1A/1 measuring 3 acre 1 gunta of land is the suit property in the present suit. The plaintiff is the owner and in possession of the survey No-400/1A/1 land measuring 3 acre 1 gunta of land. The plaintiff is using the suit way running from West to East to reach his land. The defendant has purchased the land and constructed a building over some portion of it. The Shivalingeshwar Education Society has also purchased 2 acre of land. The officers, students of the said society and the plaintiff are using the suit way from last 30 years. The defendant is trying to interfere in the use of the suit way without any rights. The plaintiff is the owner of land bearing

survey No-400/1A/1 measuring 3 acre 1 gunta of land. The defendant is required to be restrained from interfering in the use of suit way by the plaintiff. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendant has filed his written statement by denying the grounds of the application. The defendant has contended that, the suit of the plaintiff is hit by principle of res-judicata. The same counsel has already filed a suit bearing O.S.No-113/2025 through Shivalingeshwara Education Society before the Civil Judge Afzalpur against the defendant. The suit way claimed by the plaintiff is not in existence. The defendant society has purchased 2 acre of land and constructed a structure over portion of property. The defendant has kept some open space. The plaintiff in order to grab the said open space of the defendant has filed a false suit against the defendant. On the said material grounds the defendant has prayed for rejection of the present application.

4. Considering the case of both the side and on perusal of the records, following points arise for my consideration for proper adjudication of the present application:

POINTS

- 1] Whether the applicant/plaintiff has made out a prima-facie case in his favour?
- 2] Whether the balance of convenience leans in favour of the applicant/plaintiff ?
- 3] Whether the applicant/plaintiff suffer irreparable loss and damage, if the temporary injunction as sought for is not granted?
- 4] What order?

5. Having heard the arguments on the above application and also after considering the pleadings and materials available on record, my answer to the above points are as below:

Point No-1 :- In the negative

Point No-2 :- In the negative

Point No-3 :- In the negative

Point No-4 :- As per the final order for the

following

REASONS

6. Point No-1 to 3: Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

7. On perusal of the materials on record it appears that, the plaintiff has filed the present suit for the relief of

declaration of his ownership over the survey No-400/1A/1 measuring 3 acre 1 gunta of land and for the relief of injunction restraining the defendant from interfering in the use of suit way by the plaintiff. The plaintiff has shown that, the 10 feet width way goes to the land of the plaintiff is the suit property in the present suit.

8. The plaintiff has produced the Gift deed dated 30-07-2020 in support of his case. From the said document it appears that the Tukkappa S/o Girimallappa Teli has gifted the survey No-400/1A/1 measuring 3 acre 36 gunta of land in favour of the plaintiff. The said document has not recorded the existence of any suit way. The defendant has denied the existence of suit way.

9. The defendant has produced the documents showing that, the defendant is the owner of survey No-400/1A/4 measuring 2 acre of land. The defendant appears to be purchased the land in the year 1989. The defendant appears to be converted the 2 acre of land for non agriculture. Hence

considering the materials on record it appears that, the plaintiff has not produced any materials to show the rights of the plaintiff over the suit way. The plaintiff has also not produced the materials regarding the existence of suit way and location of the suit way. The plaintiff has also not produced any materials as to the existence of suit way attached to the property of the plaintiff. The plaintiff has not produced any materials to show where the suit way is exist by showing the said property as the suit property. Hence, on considering the materials on record at this stage the plaintiff has not made out a clear case in his favour. Hence, considering the materials on record it appears that, there is serious dispute between the parties with regard to the existence and location of the suit way. In order to grant a relief in favour of the plaintiff there must be a clear identification of the suit property. The plaintiff at this stage has not produced any materials to show the clear identification of the suit way property and rights of the plaintiff over the suit way. Hence, I am of the opinion that the

plaintiff has not made out a prima-facie case in his favour. Hence I answered point no-1 in the negative.

10. From the available materials if an injunction is granted as claimed by the plaintiff it may affect the defendant. The plaintiff has not made out a clear case of identification of the suit way property. The plaintiff has not made out the case showing the rights of the plaintiff over the property of the defendant. Hence considering the case of both the side and considering the records and in view of my answer to the point no-1, I am of the opinion that the plaintiff has not made out the point of balance of convenience and irreparable loss in his favour. The case of the plaintiff at this stage is not backed by any supporting and acceptable materials with regard to identification of the suit way and rights of the plaintiff over the suit way. Hence I am of the opinion that the plaintiff has not made out a case in his favour with regard to point of balance of convenience and irreparable loss. Hence I answered point no-2 and 3 in the negative.

11. Point No- 4: In view of my findings on the above point No- 1 to 3 and also considering the materials on record and considering the case of both the parties at this stage, I proceed to pass the following:

ORDER

I.A. No-1 filed by the Plaintiff under order 39 Rule 1 and 2 of CPC is hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur

[Order pronounced in the open court vide separate sheet]

ORDER

I.A. No-1 filed by the Plaintiff under order
39 Rule 1 and 2 of CPC is hereby rejected.

Senior Civil Judge & JMFC.,
Afzalpur