

KAKB410001432024



**IN THE COURT OF THE SENIOR CIVIL JUDGE
& J.M.F.C., AT : CHINCHOLI**

**Present : Smt.Jyoti.Shantappa.Kale
L.L.M.,
Senior Civil Judge & JMFC, Chincholi.**

DATED : THIS THE 15th DAY OF OCTOBER 2024

ORIGINAL SUIT No.45/2024

i.	Provision under which the application is filed	U/o 39 Rule 1,2 CPC
ii.	Relief sought for	Temporary Injunction Order.
iii.	The date on which the application is filed	24/04/2024
iv.	Number of the application	I.A No.I
v.	The date on which the objections are filed by different opponents	06/08/2024
vi.	The date on which the orders were passed on the said application	15/10/2024

Plaintiff/s

Shamrao S/o Hanamanthappa Indurkar.

V/s

Defendant/s:

Ramachandra S/o Monappa Kumbar.

-: I.A.No.I :-

Applicant/s:

Shamrao S/o Hanamanthappa Indurkar.

V/s.

Opponent/s:

Ramachandra S/o Monappa Kumbar..

ORDER ON INTERIM APPLICATION No.I FILED BY THE PLAINTIFF UNDER ORDER 39 RULE 1 AND 2 CIVIL PROCEDURE CODE, 1908

1. The plaintiff filed I.A.No.I U/o 39 Rule 1 and 2 of Civil Procedure Code, 1908 along with the main suit praying to restrain the defendant from closing or damaging the way used by the plaintiff till disposal of suit.

2. The application is accompanied with an affidavit sworn in by the plaintiff wherein he has stated that the suit property is land

bearing Sy.No.191 measuring 06 acre 09 guntas situated at Chincholi. It is further stated that since time immemorial there is a way to the suit land which passes through land bearing Sy.No.186/7 and land bearing Sy.No.189/2 and 190/4. The plaintiff is suing the said way to reach his land. The plaintiff is the owner in possession of the suit property. It is further stated that the plaintiff is using the way to reach his land since time immemorial crossing towards southern side of land bearing Sy.No.186/7 which has a Government road and further the plaintiff is using the way which passes through the land of the defendant in Sy.No.190/4. Even the ancestor of the plaintiff are using the way since time immemorial. The previous owner by name Bhimsen Rao Makshail of land bearing Sy.No.186/7 or the Government and also the defendant has not obstructed the plaintiff to use the way to reach his land. The plaintiff has improved the way out of his own expense. It is further stated that the defendant has yielded to the ill-wishers of the plaintiff and started to obstruct the plaintiff from using the way and also tried to close the way by using JCB. The plaintiff complained the same before Tahsildar Chincholi on 30-01-2024 and

also complained the same to the police station. The defendant is trying to close the way by using JCB and has also dug pits in the way so as to cause inconvenience to the plaintiff to reach his land. Thus the plaintiff has stated that if application is not allowed then irreparable loss will be caused to him as he has prima facie case and balance of convenience lies in his favour. Thus he prayed to allow the application.

3. The defendant filed memo to adopt the written statement as objection to present application. The defendant has denied the very existence of the way to the plaintiffs land. It is contended that there is no such way as pleaded by the plaintiff and the same is also not shown in Government map. The plaintiff has filed this suit with an intention to create way in the land of the defendant. The plaintiff has no right to pass over the land of the defendant. It is further contended that towards east and southern side of land of the plaintiff there is a nala and the plaintiff is using the said nala to reach his land. The plaintiff has concealed the fact there is a way adjacent to land bearing Sy.No.188 which is also convenient for the plaintiff to reach his land. The land of the defendant situated

towards the western side of land of the plaintiff and land of Rajappa Malli. The defendant has erected poles and fencing for his land. The plaintiff can reach his land by passing in the land of Rajappa Malli but the plaintiff with an intention to create way in the land of the defendant has filed this suit. It is also contended that the defendant has not denied the ownership of the plaintiff over the land of the plaintiff and therefore the suit of the plaintiff is not maintainable. On these grounds the defendant prayed to reject the application.

4. Heard arguments of learned counsel for the plaintiff and learned counsel for the defendant on I.A.No.I and perused the entire materials on record.

5. On the basis of materials on record the points arise for my consideration are as under,

- 1) *Whether plaintiff has made out prima-facie case?*
- 2) *Whether the factor of balance of convenience lies in favor of plaintiff?*
- 3) *Whether the plaintiff proves that irreparable loss will be caused to him*

*if an order of temporary
Injunction is not granted ?*

4) *What Order?*

6. On perusal of the materials on record and the application and its contents, My findings on aforesaid 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 orders
for the following,

: R E A S O N S :

7. Reasoning on Point No.1:

i) The suit is for the relief of declaration of title of plaintiff over the land bearing Sy.No.191 measuring 06 acre 09 guntas shown in the suit property and to restrain the defendant from causing interference to the plaintiff in using the way to his land. As an interim relief the plaintiff has filed I.A.I under the provisions of Order 39 Rule 1 and 2 Civil Procedure Code, 1908. The plaintiff who has sought for the Temporary Injunction order has to prove

that he has prima-facie case, balance of convenience lies in his favor and he has to make out grounds to show that if temporary injunction is not granted in his favour he will suffer irreparable loss and injury. If the plaintiff satisfies these 3 ingredients then the plaintiff will be entitled to this equitable relief sought by him. The plaintiff who seeks for the interim relief has to approach the court with clean hands and there should be no suppression of any necessary materials and facts.

ii) *In a decision reported in 1958 AIR 79 SCR 514, Martin Burn Ltd vs. R.N.Banerjee - The Hon'ble Supreme Court held that a prima-facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence led in support of the same were believed. It does not involve the determination of the conflict of evidence or complex questions of fact and law, which call for detailed arguments. It further requires that the Plaintiff should come before the Court with clean hands. If he suppresses material facts and evidence then he is not entitled for the relief of injunction and further*

points of balance of convenience, irreparable injury need not be considered in such case.

iii) In another decision reported in Prakash Singh vs State of Haryana, 2002 (4) Civil L.J.71 (P.H.)[- The Court explained that Prima-facie does not mean that a Plaintiff/Applicant should have a full proof case in his favour which will succeed in all probabilities. It means that the plaintiff/applicant has a case which cannot be rejected summarily or dismissed out right. It raises consideration which can be considered on merits. The grant of temporary injunction cannot be requested by the party as a matter of right nor can be denied by the Court arbitrarily. The injunction is an equitable remedy and attracts the application of the maxim “he who seeks equity must do equity”.The Court has complete discretion to grant an injunction or to refuse it. The discretion to be exercised by the Court depends on the facts and circumstances of each case. The relief cannot be claimed as an affair of right however worthwhile the applicant’s case may be. The power to grant an injunction must, therefore, be exercised with the utmost prudence, vigilance, and care.

(iv) In a decision reported in *Prakash Singh V/s State of Haryana 2002 (4) Civil L.J. 71 (P.H.)* }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.

(v) In light of the principles enunciated in the decision stated above now let me ascertain if the plaintiff satisfies the essential ingredient to earn the order of equitable relief. It is upon the plaintiff to show he has a fair question as to the existence of his rights.

(vi) In this case the plaintiff claims that he and his ancestors were using the way which is shown in read colour in the sketch map of the plaint since time immemorial. The plaintiff has shown the suit property as land bearing Sy.191 measuring 06 acre 09 guntas. The defendant admits in his written statement that he has not denied the title of the plaintiff over land bearing Sy.191 measuring 06 acre 09 guntas. Perusal of the plaint averment shows that all the

pleading in the suit constitute ingredients of a suit for is Easementary rights but the suit is filed for relief of Declaration of ownership in respect of land bearing Sy.191 measuring 06 acre 09 guntas which is not the subject matter of the suit. The plaint averment shows that the subject matter of the suit is the alleged way. The plaintiff has not shown the said way as suit property.

(vii) The plaintiff has claimed that he and his ancestors are using the way shown in sketch map since time immemorial for ingress and egress. The defendant has specifically denied the existence of the way in his land. At this stage the plaintiff has produced record of rights of land bearing Sy.No.191, Sy.No.189/2, Sy.No.186/7, copy of compliant given to police stating and also given to Tahsidar Chincholi. The ownership of plaintiff in respect of land bearing Sy.No.191 is not disputed by the defendant . On the contrary the defendant has produced sketch map of Sy.No.190, sketch map of Sy.No.189, Tipanni of Sy.No.190 and Tipanni of Sy.No.189 and has also produced the map of Chincholi village. The plaintiff has not produced any map or any other documents to show the existence of way in the land of defendant. Except the

undisputed record of rights the plaintiff has not produced any documents to show the existence of way in the land of defendant. The map produced by the defendant shows that in Sy.No.189 there is no such way.

(viii) The plaintiffs claim that the he is using the way but none of the documents shows that the plaintiff is using the way which is in the land of defendant. The description about the suit property and the relief sought by the plaintiff dose not prove that plaintiff has made out a prima-facie case triable by this court for grant of Temporary Injunction order. Hence, I answer point No.1 in Negative.

8. Reasoning on Point No.2 and 3:

i) **Balance of Convenience**- :- *To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it. As discussed while answering point No. 1 this court has opined that the*

plaintiff has not made out a prima facie case. The documents produced by the defendant does shows that the balance of convenience lies in his favour. When the case of both the parties is compared the defendant by producing the documents has shown that if injunction order is granted in favour of the plaintiff, then more irreparable loss will be suffered by the defendant.

ii) As discussed while answering point No. 1 this court has opined that the plaintiff has not made out prima-facie case and the balance of convenience does not lies in his favour. Under such circumstances if an order of Temporary Injunction is granted then more irreparable loss will be caused to the defendant when compared to the plaintiff. Accordingly, this court answers point No.2 and 3 in Negative.

9. **Point No.4:** In view of my findings on point No.1 to 3. I proceed the pass the following;

:- O R D E R :-

IA.No.I filed by the Plaintiffs U/o 39 Rule
1 and 2 of CPC seeking an order of Temporary
Injunction restraining the Defendant from

closing or damaging the way used by the plaintiff is hereby rejected.

Posted for compliance of section 89 Civil Procedure Code, 1908.

(Dictated to Typist typed by her corrected by me, signed and pronounced by me in the open court on **15th day of October 2024**)

(Jyothi Shantappa Kale)
**Senior Civil Judge & JMFC.,
Chincholi.**

(Order pronounced in open court vide its separate Order)

:- O R D E R :-

IA.No.I filed by the Plaintiffs U/o 39 Rule 1 and 2 of CPC seeking an order of Temporary Injunction restraining the Defendant from closing or damaging the way used by the plaintiff is hereby rejected.

Posted for compliance of section 89 Civil Procedure Code, 1908.

Call on 24-10-2024

**Senior Civil Judge & JMFC.,
Chincholi.**