

IN THE COURT OF CIVIL JUDGE JEWARGI

Present:

**Sri Namadev Kamanna Salamantapi,
B.A. LL.B (Spl.)**

Civil Judge & JMFC, Jewargi.

OS No.165/2014

Dated this the 3rd day of September 2016.

Plaintiffs :

- 1) Mallappa S/o Bailappa Haroor
(Pujari), Age about 70 years,
Occ: Agri.
- 2) Siddappa S/o Mallappa
Heroor (Pujari), Age about 38
yeas, Occ: Agri.
- 3) Shekeppa S/o Mallappa
Heroor (Pujari), Age about 36
years, Occ: Agri.
- 4) Sharnappa S/o Mallappa
Heroor (Pujari), Age about 32
yeas, Occ: Agri.
All r/o Halagadla, Tq.
Jewargi, Dist. Gulbarga.

(By Sri. P.A.J., Advocate)

//Versus//

Defendants :

- 1) Nagappa S/o Somalingappa
Kadkal, Age about 50 years,
Occ: Agri.
- 2) Yenkappa S/o Somalingappa
Kadkal, Age about 40 years,
Occ: Agri.
- 3) Yellappa S/o Sidramappa
Yeshagar, Age about 40
years, Occ: Agri.
All R/o Halagadla, Tq.
Jewargi, Dist. Gulbarga.

(By Sri. J.V.H., Advocate for defendant
No.1)

I.A.No.I.

Applicant : Mallappa S/o Bailappa Heroor.

Vs.

Opponent : Nagappa S/o Somalingappa Kadkal.

ORDER ON I.A. No. I

1. The learned counsel for the plaintiffs filed I.A.No.I U/O 39 Rule 1 and 2 of CPC seeking temporary injunction against the defendants restraining them from interfering into the peaceful possession and enjoyment of the plaintiffs over the suit property i.e., road running from north to south towards eastern side of house bearing Panchayat No.3-207 (Now numbered as 3-207/1 to 3-207/4) measuring 90' east-west and 100' north-south.
2. In support of this application, plaintiff has filed his affidavit stating that, they have filed the suit for declaration, injunction and mandatory injunction with regard to the road running from north to south existing towards eastern side of their house. The suit property House No.3-207 is their ancestral property. The road which is existing on the eastern side being used by the plaintiffs since time immemorial. The defendants have no right, title or interest over the suit property, they are obstructing them from using the said road to go to their house and they have dug the

road for storing the manure and blocked the road. The plaintiffs have made out prima facie case and balance of convenience lies in their favour. If the temporary injunction is not granted they would be put to heavy and irreparable loss. Hence, he prayed to allow his application.

3. On the other hand, the counsel for the defendants No.1 filed objections stating that, defendants No.1 and 2 are the owners and in possession of property bearing Panchayat No.3-236/1 measuring east-west 30' and north-south 40'. The name of the defendant No.1 entered in the panchayat records. The approved map is also prepared. The said property is ancestral property of defendants No.1 and 2 and they are using the same since time immemorial days as manure pit and now the defendant No.1 installed one shop of photo studio and mobile shop and doing business therein. The plaintiffs with an intention to grab the property of the defendants they filed the suit by giving wrong boundaries and extent by including the property of the defendants. Hence, suit of the plaintiff is not maintainable. It is denied by the defendants that, suit property is ancestral property and it has been divided into four divisions in between four brothers and a memorandum of partition was taken place on 1-3-2013 and separate numbers have been assigned by the Panchayat authorities. Accordingly,

among other grounds they prayed for rejections of the application.

4. The following points that would arise for my consideration:

1. Whether the plaintiff/applicant has made out prima facie case?
2. Whether the plaintiff/applicant proves that, balance of convenience lies in his favour?
3. Whether the plaintiff/applicant proves that, irreparable loss would be caused if temporary injunction is not granted in his favour?
4. What order?

5. My answer to 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:

REASONS

6. **POINTS NO.1 TO 3:-** These points are inter connected, requiring common discussion of facts and law they are taken together for determination for the sake of convenience.

7. In support of their contention plaintiffs filed the third party affidavit of Sharanappa S/o Piddappa of village

Halagadala. He has stated in his affidavit that, defendant No.1 i.e., Nagappa has kept a wooden Almera in front of the main gate of the plaintiffs' house. Due to this there is a block to the entrance of the way of the inmates of the plaintiffs. This act is intentionally done by the defendant No.1 and deserves to run some business on the said road. The Panchayat has not permitted the defendant No.1 to keep this wooden box and run the business.

8. In support of their case the plaintiffs relied upon the some documents i.e., partition deed executed by the plaintiff No.1 in favour of plaintiffs No.2 to 4 along with map, tax paid receipt of house No.3-207, mutation fee receipt of house No.3-207/1, receipt for the payment of construction fee house No.3-207, mutation fee receipt of house No.3-207/3, certified copy of Khata extract of house No.2-207/1 of Siddappa S/o Mallappa issued by the Gram Panchayat, Khata extract of house No.2-207/2 of Shekhappa S/o Mallappa and house No.2-207/3 of Sharanappa S/o Mallappa and Khata extract of house No.2-207/4 of Ningappa S/o Mallappa.
9. On the other hand the defendant No.1 in support of his contention he relied upon the three documents i.e., Khata extract of house No.3-236/1 for the year 2007 to 2014 along with copy of approved map carbon copy of tax receipt dated 01-10-2014.

10. After going through the entire materials available on records, it goes to show that, plaintiff filed suit against the defendants for declaration, injunction and mandatory injunction. It is the contention of the plaintiffs that, suit property is ancestral property of plaintiffs and they are in peaceful possession and enjoyment of the said property since time immemorial. Total measurement of their property is 100'x90'. There is road running from north to south and said road is existing since time immemorial and they are using the said road which is existing eastern side of the their house to go to the suit property and to come out from the suit property. Said road is government road. The defendants have no way concerned to the said road which existing is eastern side of the suit house. The defendants have no right, title or interest over the suit property, they are storing the manure for the last one month. Due to storage of manure on the eastern side of the suit property, the entrance to the house of the plaintiffs is being blocked.
11. In the affidavit of third party it is stated that, the defendant No.1 kept a wooden almera in front of the main gate of plaintiffs and due to this there is block to the entrance of the way of the inmates of the plaintiffs. Nowhere in the plaint and I.A.No.1 the plaintiffs stated that, defendant No.1 Nagappa has kept wooden almera in front of the main gate of their

house and due to this there is block to the entrance of the way of the inmates of the plaintiffs. The plaintiff has contended that, house Panchayat No.3-207 is the ancestral property and they are in peaceful possession and enjoyment of the said property and after division in the suit property, the portion of the house measuring 90'X25' allotted to the share of Shekhappa i.e., plaintiff No.3 which is numbered as house No.3-207/2. The portion of house measuring 90'x25' allotted to the share of Sharanappa i.e., plaintiff No.4 which is numbered as 3-207/3 of portion of house, 90'x25' allotted to the share of Ningappa S/o Mallappa which is numbered as 3-207/4. Accordingly, their names have been entered in the Panchayat records as owner and possessors to the extent of their share mentioned above.

12. I have perused the documents relied in support of I.A.No.1 by the plaintiffs i.e., Khata extracts issued by the Panchayat authorities. It appears that, the Khata extracts produced by the plaintiffs pertains to VPC No.2-207/1, 2-207/2, 2-207/3 and 2-207/4 which are not pertaining to suit property. The plaintiffs sought relief of declaration, injunction and mandatory injunction. The plaintiff has mentioned property numbers in the plaint i.e., 3-207, 3-207/1, 3-207/2, 3-207/3 and 3-207/4. Further they contended that, eastern side of this property there was existing government road and they use to go their house

through the said road and defendants intentionally to harass the plaintiffs they are storing the manure pit on the eastern side of the suit property and they blocked the road. Therefore, it is inconvenience to the plaintiffs use to go to their house through the road, which existed in front of their house.

13. On perusal of the documents produced by the plaintiffs it appears that, the documents are pertaining to the property No.2-207 wherein it is mentioned that there was a government road towards eastern side of the said property. But the plaintiffs sought declaration, injunction and mandatory injunction on the public road which is existing in front of No.3-207, 3-207/1, 3-207/2, 3-207/3 and 3-207/4. The plaintiff has not produced any documents to show that, there is a road existing towards eastern side house No.3-207, 3-207/1, 3-207/2, 3-207/3 and 3-207/4. The plaintiff has not produced any authenticated documents to show the road existing eastern side of house property No.3-207, 3-207/1, 3-207/2, 3-207/3 and 3-207/4. On the other hand, defendant No.1 contended that, himself and defendant No.2 are the owners of the property No.3-236/1 measuring 30'x40' and approved map also prepared. The said property is ancestral property and they are using the same since time immemorial days as manure pit and now they installed one shop of photo studio and mobile shop and doing business therein. In support of his

contention he relied upon the Khata extract pertaining house No.3-236/1 and approved map. On perusal of the said documents it appears that, defendant No.1 is owner of property No.3-236/1 and the Secretary and President of Gram Panchayat have issued approved map to the defendant No.1 and he has paid tax to the said property.

14. After going through the entire material available on records it goes to show that, plaintiffs have not made out prima facie and balance of convenience does not tilt in their favour. If temporary injunction is not granted no loss and injury would be caused to the plaintiffs. Hence, I answer points No.1 to 3 in the **Negative.**

15. **POINT NO. 4:-** In view of the above discussion I proceed to pass the following;

ORDER

I.A.No.I filed by the
plaintiff/applicant U/O 39 Rule 1 and
2 of CPC is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on Computer, typed by him and corrected by me and then signed and pronounced in the open court on this the 3rd day of September 2016)

(Namadev Kamanna Salamantapi)
Civil Judge & JMFC, Jewargi.