

IN THE COURT OF CIVIL JUDGE AND JMFC, JEWARGI

Present :Shri. D.RAMESH B.AL.,LL.B.,
Civil Judge & J.M.F.C, Jewargi.

Dated: This the 27th day of August-2020

O.S.No.142/2016

1. Sharnappa S/o Late Basavaraj, **:Plaintiffs**
Age:38 years, Occ: Agriculture,
R/o Aralgundgi village,
Tq: Jewargi, Dist: Kalaburagi.
2. Shankreppa S/o Shivappa
Age:65 years, Occ: Agriculture,
R/o Aralgundgi village,
Tq: Jewargi, Dist: Kalaburagi.
3. Shivalingappa S/o Shivappa
Age:62 years, Occ: Agriculture,
R/o Aralgundgi village,
Tq: Jewargi, Dist: Kalaburagi,
Now residing at Gadag.

(By Sri. S.S.D., Adv.)

V/s

1. Eranna S/o Late Mallikarjun **:Defendants**
@ Malakajappa,
Age: 54 years, Occ: Agriculture.
2. Sharanappa S/o Late Mallikarjun
Age: 50 years, Occ: Agriculture.
3. Ravindra S/o Late Mallikarjun
Age: 48 years, Occ: Agriculture.

J U D G E M E N T

The plaintiffs have filed the suit for the relief of declaration declaring that there is no cart way in the land of plaintiffs and perpetual injunction restraining the defendants from entering land of plaintiffs.

2. The brief averments of the plaint are as follows:-

That, the plaintiffs and defendants are owners of adjacent lands. The defendant No.6 was requested to join as plaintiff, but he refused and told that he has already filed RSA before the Hon'ble High Court of Karnataka, Kalaburagi with regard to cart way in Sy.No.381. The 1st plaintiff is the owner and possessor of land bearing Sy.No.381/1 measuring 2 acres 3 guntas, the 2nd and 3rd plaintiffs are the owners and possessor of land bearing Sy.No.381/3 measuring 6 acres 9 gutnas situated at Aralagundagi village of Jewargi taluk. The defendant No.1 to 6 are the owners and possessor of land bearing Sy.No.385 measuring 17 acres 30 guntas and the defendant No.7 is the owner and possessor of land bearing Sy.No.381/3 measuring 6

acres situated at Aralagundagi village, Jewargi taluk. In the year 1992-93 the Government of Karnataka had started Upper Krishna Project in and around the lands of plaintiffs and defendants and others land. Accordingly, government has made water canal and also made tar road. Further, has left 13 small bridges to reach their lands. Accordingly, two canals are opened in Sy.No.379, each one canal bridge opened in Sy.Nos.380, 381, 382 and 383, each two canal bridges are opened in Sy.Nos.384, 388, 390 and 389. After opening of canal bridges all the land owners have been using the said canal bridge to reach their lands, likewise, the plaintiffs have been using the canal bridges which are situated in Sy.No.381 and the defendants No.1 to 6 have been using the canal bridge which is situated in Sy.No.379. But prior to canal road they were using cart way which is in Sy.No.384, 383 and 382. But after establishing the canal road around the canal only few people are using. On 05-07-2016 at about 8.00 a.m., the defendant No.1 has come over the land bearing Sy.No.381 along with cattle from the Northern side of plaintiffs boundary. The plaintiffs No.1 and 2 have questioned

about the illegal entry on the standing crops, the defendant No.1 said that there is a cart way in Sy.No.381 to reach his land bearing Sy.No.385. The plaintiffs have resisted the defendant No.1, by that time the defendant No.1 went away by saying that he would come again. On the same day evening the plaintiffs have approached the defendants No.1 to 6 and requested them to not to enter in the land bearing Sy.No.381, but the defendants No.1 to 6 said that the owner of the land bearing Sy.No.379 were not allowing them to use the way in land bearing Sy.No.379, hence they wanted to create a new way in the plaintiffs land bearing Sy.No.381. Though the plaintiffs have requested them not to enter in the plaintiffs land, but the defendants No.1 to 6 did not heed the plaintiffs request. There is no cart way/path way in land bearing Sy.No.381, even in the village map also not shown any cart way in the said land. The defendants No.1 to 6 to avoid the more distance to reach their lands from the land bearing Sy.No.379, are using the land of plaintiffs to reach their land. On 10-07-2016 the plaintiffs and their well wishers have approached the defendants No.1 to 6

finally and requested them not to enter in the land bearing Sy.No.381, but the defendants No.1 to 6 said that already the suit filed by the defendant No.7 was dismissed and appeal also dismissed, in the said judgment the court has already decided that, there is a cart way in land bearing Sy.No.381 to reach the land of Sy.No.385. After enquiry made by the plaintiffs with the defendant No.7, they have come to know that the defendant No.7 has filed a suit for Injunction against the defendants No.1 to 6 and the same was dismissed. Against the said judgment he had preferred an appeal, the appeal also has been dismissed. Against the said appeal, RSA has been filed and same is pending for admission. In fact the plaintiffs have not the parties to the suit and they were not aware of about the said suit, hence same is not binding on plaintiffs. Moreover, the suit filed by the defendant No.7 is only for injunction and not any comprehensive suit. If the defendants are allowed to reach their lands in the plaintiffs property they will put heavy loss to standing crops and that apart they will also lose fertile lands for

more than 2 acres for the alleged cart way, which cannot be compensated in terms of money. Hence, this suit.

3. In pursuance of suit summons the defendants appeared through their counsel but not filed written statement.

4. In order to prove the case of the plaintiffs, the plaintiff No.1 himself examined as PW1 and got marked 22 documents at Ex.P.1 to 22 and closed their side. On the other hand the defendants have not cross-examined the PW1 and also not led any evidence on behalf of them.

5. Heard the arguments from the learned counsel for the plaintiffs, perused on records.

6. Based on the above pleadings, the following points would arise :

- : POINTS : -

- 1) Whether the plaintiffs prove that, they are in possession and enjoyment of the land bearing Sy.No.381/1 and 381/3?
- 2) Whether the plaintiffs prove that, there is no cart way/path way in their land bearing Sy.No.381 to reach the land bearing Sy.No.385 belongs to defendants No.1

to 6?

- 3) Whether the plaintiffs prove that, the alleged interference by the defendants over their land?
- 4) Whether the plaintiffs are entitled for the relief sought for?
- 5) What order or decree?

7. After hearing the arguments and perusal of the records, my findings on 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 : In the Negative.

Point No.5 : As per final order, for the following.

REASONS

8. **Point No.1:-** It is the case of the plaintiffs that, the plaintiffs and defendants are owners of adjacent lands. The 1st plaintiff is the owner and possessor of land bearing Sy.No.381/1 measuring 2 acres 3 guntas, the 2nd and 3rd plaintiffs are the owners and possessor of land bearing Sy.No.381/3 measuring 6 acres 9 gutnas, the defendants No.1 to 6 are owners and

possessor of land bearing Sy.No.385 measuring 17 acres 30 guntas and the defendant No.7 is the owner and possessor of land bearing Sy.No.381/3 measuring 6 acres, all the lands situated at Aralagundagi village, Jewargi taluk. In the year 1992-93 the Government has made Upper Krishna Project in and around the lands of plaintiffs and defendants and others property. Accordingly, the water canal has been made, and also made tar road around the canal to reach their lands. Further, has left 13 small bridges to reach the lands of farmers, likewise there are bridges to reach the lands of plaintiffs and defendants. Accordingly, there is a bridge to reach the lands of defendants in Sy.No.379. There is no cart way on land bearing Sy.No.381 to reach the lands of defendants No.1 to 6. However on 05-07-2016 the defendant No.1 entered in the land bearing Sy.No.381 along with cattle to reach his land. Immediately the plaintiffs have questioned the same, but he has said that there is a cart way in Sy.No.381 to reach his land bearing Sy.No.385. The plaintiffs have resisted the said act of the defendant No.1, by that time the defendant No.1 went away by saying that he

would come again. On the same day evening the plaintiffs have approached the defendants No.1 to 6 and requested them to not to enter in the land bearing Sy.No.381, but the defendants No.1 to 6 said that the owner of the land bearing Sy.No.379 had not allowed to use the way in land bearing Sy.No.379 to reach the lands of defendants No.1 to 6, hence they wanted to create a new way in the lands of plaintiffs. In fact the defendants No.1 to 6 to avoid the long distance to reach their lands from the land bearing Sy.No.379, they have intended to create a new road in the plaintiffs land. On 10-07-2016 finally the plaintiffs have approached the defendants No.1 to 6 and requested them to not to enter in the land bearing Sy.No.381, but the defendants No.1 to 6 said that already the suit filed by the defendant No.7 against them was dismissed and in the said judgment the court has decided that there is a cart way in land bearing Sy.No.381 to reach the land of Sy.No.385. After enquiry about the said case the plaintiffs came to know that the defendant No.7 had filed the suit for Injunction against the defendant No.1 to 6 and not any comprehensive suit. Moreover

the plaintiffs were not parties to the suit hence the said judgment is not binding on them. Hence, this suit.

9. Though the defendants appeared through their counsel, but not filed written statement and not contested the matter.

10. In order to prove the case of plaintiffs, plaintiff No.1 himself examined as PW.1 by way of affidavit and reiterated the averments made in the plaint and got marked 22 documents at Ex.P.1 to 22.

11. Before going to discuss the case it is profitable to refer the judgment reported in **Maya Devi Vs Lalta Prasad (2015) 5 SCC 588** held that the absence of the defendant to contest the suit does not invite a punishment in the form of an automatic decree. The Hon'ble Supreme Court said;

“41. The absence of the defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim; may, this feature of the litigation casts a greater responsibility and

onerous obligation on the trial court as well as the executing court to be fully satisfied that the claim has been proved and substantiated to the hilt by the plaintiff. Reference to Shantilal Gulabchand Mutha Vs Tata Engineering and Locomotive Company Limited, will be sufficient. The failure to file a Written Statement, thereby bringing Order 8 Rule 10 of the code of Civil Procedure into operation, or the factum of the defendant having been set exparte, does not invite a punishment in the form of an automatic decree. Both under Order 8 rule 10 of the code of Civil Procedure and on the invocation of Order 9 of the code of Civil Procedure, the court is nevertheless duty bound to diligently ensure that the plaintiff stands proved and the prayers therein are worthy of being granted.”

12. On the backdrop of the above said settled principles of law let me discuss the Ex.P.1 to 22. The Ex.P.1 RTC for the year 2015-16 in respect of land bearing Sy.No.381/1 shows the name of one Indirabai who is not a party to the suit, It is not clear why the Ex.P.1 is produced from the perusal of pleadings or examination-in-chief affidavit. A perusal of the plaint it is

pleaded that, the plaintiff No.1 is the owner and possessor of land bearing Sy.No.381/1 measuring 2 acres 3 guntas. But as discussed above Ex.P.1 RTC in respect of land bearing Sy.No.381/1 shows the name of one Indirabai who is not a party to the suit. Further, also produced Ex.P.22 Death certificate of said Indirabai, it is also not clear that why Ex.P.22 is produced from the perusal of pleadings or examination-in-chief affidavit. Ex.P.2 RTC for the year 2015-16 in respect of land bearing Sy.No.381/2 shows the name of Kasturibai who is also not party to the suit and it is also not clear that why the said document is produced. Ex.P.3 RTC in respect of land bearing Sy.No.381/3 shows the names of defendant No.7, plaintiff No.2 and 3, to be in possession of measuring 6 acres 1 gunta, 3 acres 5 guntas and 3 acres 4 guntas respectively. The Ex.P.4 to 9 RTCs show the names of defendants No.1 to 6.

13. The present suit for declaratory relief and perpetual injunction, the person in possession of the property and the person aggrieved has not entered into witness box to vent their grievance before the court. The person who has entered into

witness box as PW1 is arrived as plaintiff No.1. From perusal of the plaint or oral and documentary evidence do not make it clear as to in what capacity he has filed the suit or has entered into witness box. A perusal of affidavit filed in lieu of examination-in-chief do not reveal whether PW1 has deposed for himself alone or other plaintiffs. From the perusal of plaint it is clear that plaintiff No.1 and other plaintiffs are not related to each other by blood. When such is the case the plaintiff No.1 at best can be said to have no locus-standi to file and prosecute the present suit. This court is the opinion that on the basis of oral and documentary evidence produced by the person who is no way connected with either property in dispute or directly aggrieved by the dispute it is not safe to come to a conclusion as to the existence of rights and disturbance there off by the defendants or other third parties.

14. As discussed above though the plaintiff No.1 pleaded in the plaint that, he is the owner and in possession of land bearing Sy.No.381/1 measuring 2 acres 3 guntas, no document has shown either his ownership or possession of the said

property. Further, though Ex.P.3 RTC shows the name of plaintiff No.2 and 3 in respect of land bearing Sy.No.381/3 measuring 3 acres 5 guntas and 3 acres 4 guntas respectively, they have not come and adduce the evidence before the court. As discussed above the plaintiff No.1 who has examined as PW1 no way connected with the plaintiff No.2 and 3, he has not Power of Attorney Holder of plaintiff No.2 and 3 and he has not deposed on behalf of the plaintiff No.2 and 3. The affidavit of filed in lieu of examination-in-chief do not reveal that he has adducing evidence on behalf of the other plaintiffs. Hence, the evidence of plaintiff No.1 cannot be considered on behalf of other plaintiffs. Therefore, this court of the opinion that, the plaintiff No.1 is not proved his possession over the land bearing Sy.No.381/1 measuring 2 acres 3 guntas. Further, though the names of plaintiff No.2 and 3 show in the Ex.P.3 RTC that cannot be considerable for the aforesaid reason. Hence, the plaintiffs have failed to prove their possession over the land bearing Sy.No.381/1 measuring 2 acres 3 guntas and land bearing

Sy.No.381/3 measuring 6 acres 9 guntas. Accordingly, I answer the point No.1 in the Negative.

15. Point No.2: The plaintiffs pleaded that, though there is no cart way in the land bearing Sy.No.381 to reach the properties of defendants No.1 to 6, the defendant No.1 has come over the land bearing Sy.No.381 with cattle on 05-07-2016 by claiming that there is a cart way in the said survey number. Let me discuss whether there is a cart way or not in land bearing Sy.No.381. The Ex.P.10, 11, 13 and 18 are the village maps of Aralagundagi village. A perusal of the same do not disclose the date or year of which the said maps are prepared and they do not throw light as whether the same have prepared in the recent past or when a decades back. Because the date or year of the said sketch was prepared are very much important in decide the present suit. If the said village maps have been prepared recent past it can be relied. If it has been prepared long back it will not help to decide the present case. Because there may be development taken place in and around the lands and new roads also made subsequently.

In fact in para No.10 of the plaint the plaintiffs themselves pleaded that there is a canal bridge in Sy.No.379 to reach the land of defendant No.1 to 6. But no such recital available in the Ex.P.10, 11, 13 and 18. Further, the plaintiffs themselves pleaded in the plaint that in the year 1992-93 Upper Krishna Project has been done by the State Government and canal also has been made around the properties of plaintiffs and defendants. Further it also made the tar road beside the canal. But all these canal roads are not shown in the said Ex.P.10, 11, 13 and 18 village maps. Therefore, it is clear that, the said village maps have been prepared prior 1992-93 and the subsequent changes have not been shown in the village maps. Therefore, based on the said village maps alleging non existence of road in land bearing Sy.No.381 cannot be decided. When such being the case how can say that either there is a cart way or not in the land bearing Sy.No.381 based on the said village maps. Therefore, only based on village maps it cannot be hold that there is no cart way in the land bearing Sy.No.381. Plaintiffs have not produced any photographs to show the

present condition of the said lands and existence of the roads. Further, they have not made any efforts to get commissioner appointed to make local inspection to ascertain as to the existence or non existence of the cart road. Except oral evidence of PW1 who is no way concerned to the property in dispute, there is no supporting or corroborating evidence to decide the non existence of cart way in the land bearing Sy.No.381. The Ex.P.14, 15, 16, 17, 19, 20 and 21 are the Form No.10s, Tounch maps, Hissa Phodis and Aakar bands in respect of land bearing Sy.No.381/1 and 385. But they are not helpful for deciding the existence or non existence of road, because they pertaining to hissa phodi and other changes to the respective lands. Therefore, it is held that, the plaintiffs have failed to prove that non existence of cart way in the land bearing Sy.No.381. Accordingly, I answer the point No.2 in the Negative.

16. Point No.3: The plaintiffs have pleaded that, on 05-07-2016 at about 8-00 a.m., defendant No.1 came over the land bearing Sy.No.381 with cattle, when the plaintiffs No.1 and 2

asked for illegal entry on the standing crops, the defendant No.1 said that there is a cart way in land bearing Sy.No.381 to reach the land bearing Sy.No.385. As discussed above the plaintiffs have failed to prove either their possession over the land bearing Sy.No.381 or the alleged non existence of road in the said land. Moreover, they have not produced any oral or documentary evidence except PW1's evidence that too who is no way connected to the suit property, to prove the alleged interference by the defendant No.1. If really the defendant No.1 has entered into the property of plaintiffs illegally, at least they would have make efforts to lodged the criminal complaint against defendant No.1 about illegal entry. But no such pleadings or documents available in the record. If the defendant No.1 alone entered into the land of plaintiffs illegally, why the other defendants are made parties to the suit, and its clearly shows that there is no cause of action against the defendant No.2 to 7. In fact no cause of action has been proved against the defendant No.1 also. Accordingly, I answer the point No.3 in the Negative.

17. Point No.4: As discussed in the above points the plaintiffs have not proved their possession over the land bearing Sy.No.381 and also not proved the non existence of road in the said land. Further, they have not proved the alleged interference also. Therefore they have not entitled any relief sought by them. Accordingly, I answer the point No.4 in the Negative.

18. Point No.5 :- In view of my findings on the above points, I proceed to pass the following;

ORDER

**The suit of the plaintiffs is
hereby dismissed with cost.**

Draw decree accordingly.

(Dictated to the stenographer, transcribed by him. The transcript revised by me, and then pronounced in the open court on this the 27th day of August, 2020.)

**(D.Ramesh)
Civil Judge & J.M.F.C.,
Jewargi.**

ANNEXURES**Witnesses examined for the Plaintiffs:**

PW1 : Sharnappa S/o Late Basavaraj.

Documents exhibited by the Plaintiffs:

Ex.P.1 to 9 : RTC extracts.
Ex.P.10 and 11 : Certified copy of village Maps.
Ex.P.12 : Certified copy of Tounch Map.
Ex.P.13 : Certified copy of Village Map.
Ex.P.14 : Certified copy of Form No.10.
Ex.P.15 : Certified copy of Hissa Phodi.
Ex.P.16 : Aakar band.
Ex.P.17 : Certified copy of Tounch Map.
Ex.P.18 : Certified copy of Village Map.
Ex.P.19 : Certified copy of Form No.10
Ex.P.20 : Certified copy of Hissa Phodi.
Ex.P.21 : Aakar band.
Ex.P.22 : Death Certificate.

Witnesses examined for the Defendants:

- Nil -

Documents exhibited by the Defendants:

- Nil -

(D.Ramesh)
Civil Judge & J.M.F.C.,
Jewargi.