

KAKD030029482022



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
MADIKERI.**

PRESENT
SMT. C.N.MUNIRATHNAMMA, B.A. LL.B.,
Prl. Civil Judge, Madikeri.

Dated, this the 30th day of May, 2023

O.S.No.145/2022

PLAINTIFFS: Nidinji Somaiah Gowda & 7 others

(By Sri.J.S.B., Adv.,)

V/S

DEFENDANTS: N.A.Purushothama & 2 others

(By Sri.B.S.R., Adv.)

PARTIES TO APPLICATION NO.II

Applicant/plaintiffs : Nidinji Somaiah Gowda & 7 others

V/S

Opponent/defendants : N.A.Purushothama & 2 others

ORDERS ON AN APPLICATION No.II

The counsel for the plaintiffs have filed this application under Order XXXIX Rule 1 and 2 of CPC. and sought for an ad-interim order of temporary injunction restraining the defendants, their men and agents or any other person claiming through or under them, from blocking, or otherwise obstructing or interfering in any manner into the peaceful enjoyment, use of the suit schedule Road by the plaintiffs pending disposal of this suit.

2. The suit schedule property is,

Schedule

Approximately 200 meters long, 11 feet wide road called by name "Halasinadka road" commencing from Balambi- Urubail Sadac Road and running in the land bearing Sy.No.8/302, 8/346, 8/24 of U.Chembu village, Sampaje Hobli, Madikeri Taluk, Kodagu, towards Southward directions till the properties of the plaintiffs in Sy.No.8/97A of 0.50 acres, Sy.NO.8/73 of 0.98 acres, Sy.No.8/36 of 1/66 acres, Sy.No. 8/80 of 1.82 acres, Sy.No.8/152 of 3.00 acres of U.Chembu village, Sampaje Hobli, Madikeri Taluk, Kodagu.

3. In the affidavit annexed to the application, the plaintiff No.5 has stated on behalf of other plaintiffs. He has stated that, they are the absolute joint owners in possession and enjoyment of the properties in Sy.No.8/97A of 0.50 acres, Sy. No. 8/73 of 0.98 acres, Sy.No. 8/36 of 1.66 acres, Sy.No. 8/80 of 1/82 acres, Sy.No.8/152 of 3.00 acres of U.Chembu village, Sampaje Hobli, Madikeri taluk. Further stated that, the said properties are ancestral properties and they are jointly stood in their names and they are cultivating the land by constructing separate houses in the property. Further stated that there was a road approach in the property which was called as suit schedule road which situated in Sy.No.8/302, 8/346 of U.Chembu village, Sampaje Hobli, Madikeri Taluk.

4. Further stated that, the suit schedule road entered in his property after passing through the properties of the defendants. The said suit schedule road is using by them along with other public to reach their properties and houses respectively. The said road was passing through the middle area of the aforesaid lands. The defendants wanted to shift

the said road to the side of said land and accordingly there was negotiation before Nyaya Samithi of Chemby Grama Panchayath and accordingly the understanding agreement was made in writing on 10.08.2011 to which the defendant No.1 had also signed as signatory to the agreement. Accordingly the road was shifted to the eastern side of the said land in Sy.No.8/302, 8/346 of U.Chembu village. Further stated that they have constructed an iron gate at the entrance of the said road at their own costs and had also planted hedge plants by the side of the said road.

5. Further stated that, during the month of March of 2015, there was plan to improve the public road under Sadak Yojane and hence the contractor-Karadi construction owned by Sri.Gopalakrishna wanted the land of the defendant No.1 in Sy.No.8/302 for the purpose of stone crushing and for stocking the crushed stone. The defendant No.1 had leased said land to said contractor. Since, the gate was obstructing the free movement of big lorries and tippers, the contractor wanted to remove the said gate and defendants asked said contractor to remove

the same. Accordingly the contractor removed the said gate and he used the land of the defendants. Accordingly the road work was completed. Since then there is no gate all these years from the year 2015. Due to development of public road the said public road come to be elevated to higher position and the point where in the road deviates from public road the area has become very steep area. In other words, there is big variation in the level of land in that point. Hence, now the construction of gate in that area is not possible without disturbing the use of the road. Further stated that they have no alternative road to reach their respective properties and except the road which called by name Halasinadka road.

6. It is further stated that, during the Panchayath elections one of the candidates had plan to improve the said road by concreting the same. Coming to know about this plan, the defendants wanted to obstruct the said improvement of road by their jealousy and that is why they want to put up the gate again which is not practicable under changed circumstances such as land elevation mentioned

earlier. Further there is no, damage or threats by people or cattle to the cultivation of said land. The village is peaceful in every aspect and there are no such incidents or threat to any one's crop. Further stated that they have no alternative road and they are using the said road for their movement and they have using it daily and the said road deviating from Balambi- Urubail Sadac Public road and there in existence since time immemorial. Further there was a temple of Shree Rajarajeshwari temple and public are using the aforesaid road and no other road except the road which was in existence in the present Sy.No.8/302, 8/346 and 8/24 of U.Chembu village. Now the defendants tried to block the free usage of the said road. Therefore, they have lodged complaint before Nyaya Samithi Chembu Gramapanchayath and there was a decision by way of agreement on 10.08.2011 in presence of Nyaya Samithi of Chembu Grama Panchayath.

7. Further the defendants violated the said settlement and they digging the soil in two or more places in the road. Therefore, the plaintiff lodged complaint on 28.11.2021

before Sampaje Out post Police station. But the police have not taken any action and directed to approach the Civil Court as the dispute is civil in nature. Therefore, issued notice on 28.01.2022 to the plaintiffs and the plaintiffs issued suitable reply on 06.02.2022 as complaint to the Nyaya Samithi for digging of soil in the road and Nyaya Samithi visited the spot and issued endorsement with regarding the same on 29.01.2022 and 23.02.2022. Thereafter the plaintiffs lodged complaint to the Tahsildar, Madikeri and the Revenue Inspector Sampaje Hobli alongwith Village Accountant Chgembu village visited the spot on 15.06.2022. Thereafter issued notice to the first plaintiff and others and the first defendant and others to appear before them on 10.08.2022. Accordingly they have appeared and revenue authorities have warned the defendants and wanted them not to cause any obstruction for the free usage of the suit schedule road by them in future dates. Further stated that inspite of the order of the Nyaya Samithi the defendants alongwith their workers illegally tried to prevent them from walking on the suit schedule road on 28.11.2022 at about 8.30 a.m. There was

heated words exchanged between the two groups i.e., plaintiffs and defendants. The defendants are very powerful persons and they have no right either to prevent or to block the road. Therefore, sought for permanent injunction restraining the defendants from obstructing the suit schedule road in any manner and prayed to allow the application.

8. Per contra, the defendants have filed objections by denying the entire averments of the plaintiffs in the written statement. The said written statement is treated as objection to the application. The defendants admitted the agreement dated 10.08.2011 and denied the averments of the plaint as false. The defendants stated that the plaintiffs have been using the road by name Anehall to Nidinji since time immemorial to go to their respective properties and the said road is a public and Panchayath road. The Panchayath by their funds has concretized the road to the length of 700 mts. On 10.08.2011 the plaintiffs with some ill-intention not know to these defendants through Nayays Samithi of the panchayath requested the

defendants to permit them to use the private road made by the defendants in the middle of their land for their personal use only. These defendants on some humanitarian consideration permitted the plaintiffs to use the private road of the plaintiffs only for limited period on some conditions viz., the plaintiffs shall put up a gate and fence the land on the either side of the road. The plaintiffs in the beginning to gain confidence of the defendants put up a gate and planted hedge plants.

9. Further stated that in the year 2015 the plaintiffs gave their land on lease to one contractor by name Gopalakrishna to do stone quarrying in their land. The said Gopalalrishna on the instigation of the plaintiffs removed the gate and did not comply the terms and conditions made in the agreement. The defendants in order to maintain cordial relationship have been requesting the plaintiffs to restore the gate and fence the properties on either side of the road, but the plaintiffs have not restored the gate and fence to their lands on the either side of the road. Because of the negligent attitude of the plaintiffs the

defendants had to suffer huge losses as their agricultural land became open to cattle and other animals. Further it has become a spot for drunkards who used to consume alcohol in the middle of their lands during night hours causing lot of nuisance and inconvenience, heavy loss to the defendants.

10. Further contended that the plaintiffs have no right over the private road existing in the land of the defendants which is only the personal use of the defendants. The plaintiffs have been using the private road of the defendants only on the permission of the defendants. They have no right over the said roads. The claim of the plaintiffs that they have no other alternative road is a false story created by them to gain right over the private road made by the defendants in the middle of their land for their personal use. Instead of complying with the terms and conditions mentioned in the agreement, the plaintiffs got filed vexatious suit. The defendants are living under fear and threat by the plaintiffs. Hence, prayed to dismiss the application filed by the plaintiffs.

11. The point that arise for my consideration are;

- 1. Whether the plaintiffs have made out a prima-facie case?*
- 2. Whether the balance of convenience lies in favour of plaintiffs?*
- 3. Whether irreparable injury would be caused to the plaintiffs if an order of temporary injunction is not passed?*
- 4. What Order?*

12. Heard the learned counsel for the plaintiff and defendants. The learned counsel for the plaintiffs relied upon the following decisions:

- 1. (2010) 1 S.C.R. 271 (Sree Swayam Prakash Ashramam and another Vs. G.Anandavally Amma and others)**
- 2. 2009 (3) Civil L.J 3321 (M/s. Joy Auto Works and others vs. Sumer Builders (P) Ltd. and another)**
- 3. AIR 1986 Ker. 75 (Maniyam Krishnan and another Vs. Maniyam Nanukuttan)**
- 4. RSA No.449/2007s (Karnataka High Court) (H.R.Somegowda Vs. H.M.Upendra)**

13. My answer to the above points are as under;

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : In the **AFFIRMATIVE**

Point No.3 : In the **AFFIRMATIVE**

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

REASONS

14. **Point No.1 to 3** :- Since, these points are interconnected and based on common facts, all the points are taken up together for common discussion and in order to avoid repetition of facts.

15. In an application filed under Order XXXIX Rule 1 and 2 of CPC, the person who has filed an application has to show the essential ingredients to grant temporary injunction. The first and foremost essential ingredients to grant temporary injunction is prima-facie or triable case. In order to grant the temporary injunction, the other two ingredients are balance of convenience as well as irreparable injury. The plaintiffs are also required to prove that if the injunction is not granted, he would be put to untold misery and hardship and also required to prove that

the balance of convenience lies in their favour. In light of above principles, let me examine the factual matrix of this case.

16. In the application, the plaintiffs have stated that, they are the absolute joint owners in possession and enjoyment of the properties in Sy.No.8/97A of 0.50 acres, Sy. No. 8/73 of 0.98 acres, Sy.No. 8/36 of 1.66 acres, Sy.No. 8/80 of 1/82 acres, Sy.No.8/152 of 3.00 acres of U.Chembu village, Sampaje Hobli, Madikeri taluk and the properties are ancestral properties. They are jointly stood in their names and they are cultivating the land by constructing separate houses in the property. Further there was a road approach in the property which was called as suit schedule road which situated in Sy.No.8/302, 8/346 of U.Chembu village, Sampaje Hobli, Madikeri Taluk. The suit schedule road entered in his property after passing through the properties of the defendants. The said suit schedule road is using by them along with other public to reach their properties and houses respectively. The said road was passing through the middle area of the aforesaid lands. The defendants wanted to shift

the said road to the side of said land and accordingly there was negotiation before Nyaya Samithi of Chemby Grama Panchayath and accordingly the understanding agreement was made in writing on 10.08.2011 to which the defendant No.1 had also signed as signatory to the agreement. Accordingly the road was shifted to the eastern side of the said land in Sy.No.8/302, 8/346 of U.Chembu village. They have constructed an iron gate at the entrance of the said road at their own costs and had also planted hedge plants by the side of the said road.

17. It is alleged by the plaintiffs that during the month of March of 2015, there was plan to improve the public road under Sadak Yojane and hence the contractor-Karadi construction owned by Sri.Gopalakrishna wanted the land of the defendant No.1 in Sy.No.8/302 for the purpose of stone crushing and for stocking the crushed stone. The defendant No.1 had leased said land to said contractor. Since, the gate was obstructing the free movement of big lorries and tippers, the contractor wanted to remove the said gate and defendants asked said contractor to remove the same.

Accordingly the contractor removed the said gate and he used the land of the defendants. Accordingly the road work was completed. Since then there is no gate all these years from the year 2015. Due to development of public road the said public road come to be elevated to higher position and the point where in the road deviates from public road the area has become very steep area. Now the construction of gate in that area is not possible without disturbing the use of the road. They have no alternative road to reach their respective properties and except the road which called by name Halasinadka road . They are using the said road for their movement and they have using it daily and the said road deviating from Balambi- Urubail Sadac Public road and there in existence since time immemorial. Further there is a temple of Shree Rajarajeshwari temple and public are using the aforesaid road and no other road except the road which is in existence in the present Sy.No.8/302, 8/346 and 8/24 of U.Chembu village. Now the defendants tried to block the free usage of the said road.

18. On the other hand, the defendants have admitted the agreement dated 10.08.2011 and denied the averments of the plaint as false. The defendants stated that the plaintiffs have been using the road by name Anehall to Nidinji since time immemorial to go to their respective properties and the said road is a public and Panchayath road. The Panchayath by their funds has concretized the road to the length of 700 mts. On 10.08.2011 the plaintiffs with some ill-intention not know to these defendants through Nayays Samithi of the panchayath requested the defendants to permit them to use the private road made by the defendants in the middle of their land for their personal use only. These defendants on some humanitarian consideration permitted the plaintiffs to use the private road of the plaintiffs only for limited period on some conditions viz., the plaintiffs shall put up a gate and fence the land on the either side of the road. The plaintiffs in the beginning to gain confidence of the defendants put up a gate and planted hedge plants.

19. Further in the year 2015 the plaintiffs gave their land on lease to one contractor by name Gopalakrishna to do stone quarrying in their land. The said Gopalakrishna on the instigation of the plaintiffs removed the gate and did not comply the terms and conditions made in the agreement. The defendants in order to maintain cordial relationship have been requesting the plaintiffs to restore the gate and fence the properties on either side of the road, but the plaintiffs have not restored the gate and fence to their lands on the either side of the road. Because of the negligent attitude of the plaintiffs the defendants had to suffer huge losses as their agricultural land became open to cattle and other animals. Further it has become a spot for drunkards who used to consume alcohol in the middle of their lands during night hours causing lot of nuisance and inconvenience, heavy loss to the defendants.

20. In order establish the contentions of the plaintiffs, the plaintiffs have produced true copy of the order of Gramapanchayath Nyaya Samithi Chembu Gramapanchayath, endorsement issued by the PDO

Chembu Gramapanchayath, Proceedings endorsement issued by the Revenue Authority Sampaje Hobli, Statement, NCR, Legal notice, Reply notice, proceedings of Samajika Nyaya Samithi Chembu Gramapanchayath, Complaint copy, RTCs and photo with C.D.

21. Per contra, the defendants have produced copy of application given by the defendant for Hadbusth survey, copy of objections alongwith enclosures filed by the plaintiffs to the surveyor and copy of the notice issued by the Surveyor.

22. On going through the pleadings of the parties, it is clear that the plaintiffs have been using the suit schedule road with the permission of the defendants. Initially there was a gate and plants by the side of the road in the property of the defendants to protect the properties of the defendants. As stated by both the parties there was a stone quarry run by Gopalakrishna and he used the property of the plaintiffs and defendants to crush the stones and shifted them by using the suit schedule road by

damaging the plants planted by the plaintiffs and gate installed by the plaintiffs. As alleged by the defendants, the said Gopalakrishna has not made efforts to re-install the gate which he had installed the gate in where he damaged the plant planted by the defendants. The said facts made dispute between the plaintiffs and the defendants and now both the parties are not ready to install the gate and not ready to fence by the side of the road.

23. On viewing the averments, it is clear that the defendants were digging the soil in the middle of the road to obstruct the plaintiffs by using the suit schedule road which made the plaintiffs to suffer while reaching their properties and houses as stated by them. On the other hand, the defendants making allegations against the plaintiffs that the plaintiffs have alternative road to use their properties and houses with an ill-motive they have entered with an agreement with them on 10.08.2011 in spite of some conditions imposed by the defendants on plaintiffs while using the road, the said conditions were

violated by the plaintiffs. According to the defendants the condition is that, to put up a gate and fence to the land of the defendants by the side. As stated by the plaintiffs and the defendants there was a gate and fence by planting the plants by the side of road which were damaged by one contractor Gopalakrishna. Therefore, the defendants cannot allege against the plaintiffs for the damage made by the said Gopalakrishna.

24. On perusal of the agreement dated 10.08.2011 which was the document made by the Gramapanchayath Nyaya Samithi which produced by the plaintiffs at the time of filing of the present suit which bears the name and signature of the defendant No.1 to 3 by name N.A.Purushothama, N.A.Umesh and N.A. Prakash and they have agreed before the Nyaya Panchayath that they have no objection to use the road by the plaintiffs by erecting the gate and also by planting plants by the side of the land of the defendants. Accordingly, the plaintiffs have been using the said road since 2011. The said facts were agreed by the defendants. Therefore, it is clear that

there was a road which was used by the plaintiffs. Now the defendants tried to obstruct the plaintiffs by using the said road which they have earlier permitted the plaintiffs to reach their lands and houses by digging the soil in the middle of the road and they have closed the road which shows the photographs produced by the plaintiffs. Therefore, at this stage, there was no averments regarding the alternative road existing to the plaintiffs to use their property and houses. To ascertain the said alternative road, the detail trial has to be conducted. Therefore, if an order of temporary injunction is not granted in favour of the plaintiffs, then the irreparable injury would be caused to the plaintiffs. Moreover, the material discloses that the balance of convenience lies in favour of the plaintiffs and irreparable injury will also cause to the plaintiffs if an order of temporary injunction is not granted. Therefore, I am answering the Point No. 1 to 3 in the **“AFFIRMATIVE”**.

25. **Point No.4:-** On the basis of discussion made on point No.1 to 3, I proceed to pass the following;

ORDER

The application No.II filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants, their men and agents or any other persons claiming through or under them are hereby temporarily restrained from blocking, or otherwise obstructing or interfering in any manner into the peaceful enjoyment, use of the suit schedule road till the disposal of the suit.

No order as to cost.

(Dictated to the Stenographer transcribed by her, then corrected and pronounced by me in the Open Court on this the **30th** day of **May, 2023**).

sd/xxx
(C.N.MUNIRATHNAMMA)
Prl. Civil Judge and JMFC.,
Madikeri