

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE JMFC,
VIRAJPET.**

PRESENT

PRESENT : Sri. PRADIP POTADAR, B.COM. LL.B.,

Addl. Civil Judge & JMFC.,

Dated, this the 17th day of January 2024

O.S. No. 60/2023

PLAINTIFF : B.K.Iythappa
S/o Late Kukrappa Poojari
Aged 57 years
R/o Yedoor Village
Ammathi Vontiyangadi
Virajpet Taluk

(By Sri. B.A.S. Advocate)

V/s

DEFENDANT : Smt.Codanda Nanjamma Madappa
W/o Vinod Madappa
Aged 55 years
R/at Kadaga Estate
Kadagadalu Village
Madikeri Taluk

(By Sri. N.M.C. Advocate)

PARITIES TO I.A.V

PLAINTIFF : B.K.Iythappa
APPLICANT/

V/s.

DEFENDAT/
OPPONENT : Smt.Codanda Nanjamma Madappa

ORDER ON I.A.V FILED UNDER SECTON 151 OF
CIVIL PROCEDURE CODE.

The applicant/plaintiff has filed this application seeking issuance of directions to the Siddapura Police Station to assist the plaintiff to open the iron gate temporarily from 19.01.2024 to 22.01.2024 to transport pooja items and to allow the vehicles of the devotees to perform pooja.

2. In the affidavit annexed to the application it is stated that the plaintiff has filed this suit against the defendant for the relief of declaration and permanent injunction. In this suit this court has passed ad-interim stats-quo order against the defendant. Inspite of that the defendant has erected iron gate across the public road to restrict the defendant, his family, devotees and general publics to reach his residential house and also Sri.Kallurti Koragajja Temple. Since 2022 every year plaintiff is

performing special pooja at Sri Kallurti Koragajja Temple. This year on 19.01.2024 to 22.01.2024 the plaintiff fixed date of festival and special pooja at the schedule property, nearly 2000 devotees are expected to participate in this regard. Further, on that day Annadana Prasada would be provided to the devotees. Thus, the plaintiff wants to transport items to the temple through public road. Since the defendant erected the iron gate across public road without permission of the court which cause inconvenience to the plaintiff to perform the pooja in the schedule property. On all these grounds, the plaintiffs prays to allow this application.

3. Per contra, the defendant has filed objection to the I.A.No.V. It is contended that this court has granted ad-interim status quo order for Sy.No.17/8 which an extent of 0.40 acres. The private iron gate exists in Sy.No.18/1

which is 3 to 4 k.m away from the schedule property. The defendant has absolute owner of land bearing Sy.No.17/1, 18/1 and 17/5p2 altogether an extent of 31.56 acres. The Hon'ble High Court of Karnataka has given adequate protection through Deputy Commissioner and Superintendent of Police, Kodagu District and also through jurisdictional Sub Inspector, Siddapur, Kodagu District.

4. It is contended that the plaintiff illegally installed sign board at the entrance of the estate of the defendant with the help and permission from the Grama Panchyath, Kannangala. It is further submitted that the defendant has illegally constructed the temple in the suit schedule property. The plaintiff and his accomplices are making organized attempts to grab private road of the defendant. It is a season of coffee and pepper harvest. The defendant

needs complete protection to her estate from the strangers and there is a apprehension to commit theft in respect of estate produce, timbers etc. The iron gate had already installed at the entrance of Sy.No.18/1 has been stolen on the behest of the plaintiff for his convenience. In this regard case has been registered in Crime.No.4/2023, but the jurisdictional police drastically and deliberately failed to bring the culprits. It is submitted that the government road is already exists to reach the house of the plaintiff through Sy.No.18/4, 18/6, 18/3 and 18/1. The said road has clearly mentioned in the village map. The iron gate is installed to the private property of defendant and not road. Hence, the defendant pray to dismiss the I.A.No.V.

5. Heard both sides. Perused material available on record.

6. On perusal, following points are arise for my consideration:

1. Whether the plaintiff has made out grounds to allow the I.A.No.V?

2. What order ?

7. My answers to the aforementioned points are as under :

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

Point No. 2 : **As per the final order for the following:**

REASONS

8. **Point No.1:-** I have gone through the I.A affidavit, objection, pleading and documents placed before the court. The plaintiff has filed this suit against the defendant for the relief of declaration of title and permanent injunction in respect of suit schedule property. The suit schedule property is an area of 0.40 acres bearing Sy.No.17/8 old Sy.No.17/1 Kula No.72

situated in the Yedoor Village, Virajpet Taluk, Kodagu District. However, the status-quo order passed by this court is in respect of suit schedule property. It is to be noted that the alleged road is not a suit schedule property.

9. I have carefully gone through the materials available on record. The defendant nowhere denied about temple and house of the defendant situated in the suit schedule property. But the defendant alleged that the plaintiff has illegally constructed the temple and house with collusion of Grama Panchyath, Kannangala in the suit schedule property. It is further alleged that, the plaintiff having public road to reach the temple and his house. Despite of that the plaintiff is claiming road over the private property as public road. **On the other hand the plaintiff** is claiming that the defendant has illegally put

up iron gate at the entrance of public road and he is unable to reach temple and his property. The said road is not a private road. However, to decide whether the iron gate has installed to the public road or private property is matter of trial. Further, whether the plaintiff has constructed a temple and house in the suit schedule property illegally or not is also matter of trial. In this case, the plaintiff has filed this application seeking permission to remove the iron gate from 19.01.2024 to 22.01.2024, for celebration of festival. In respect of it the plaintiff has produced invitation card and other documents.

10. It is to be noted that the defendant has filed suit against the plaintiff in O.S.No.17/2023. Further it is to be noted that the plaintiff has approached **Hon'ble High Court of Karnataka in Writ Petition no.10028/2023** and produced photo copy of order dated:11.05.2023.

Wherein, the Hon'ble High Court of Karnataka has directed the Deputy Commissioner, Superintendent of Police of Kodagu District and Sub Inspector of Siddapura Police Station to provide adequate protection of the property of the defendant. In the said petition the present plaintiff is the respondent no.10. Such being the case plaintiff could bring the said fact before Hon'ble High Court of Karnataka in this regard. Further, in the Writ Petition it is made clear that the said order will not in any manner come in the way of O.S.No.17/2023 pending on the file of the Civil Judge, Virajpet. Such being the case, it is the duty of the plaintiff to bring to the notice of Hon'ble High Court of Karnataka about this pending suit. On perusal of record it appears that plaintiff nowhere disclose about the fact that whether he has approached to the Hon'ble High court of Karnataka or not. In the affidavit annexed to the application the plaintiff stated

that more than 2000 devotees are expected in participation of festival in the said temple. Such being the case, it cannot be say that the devotees might be the law abiding persons or they might be know about pending litigations between the plaintiff and the defendant. There would be a chances of happening unwanted things. It is to be noted that this is season of coffee and pepper harvesting season. In the objection, the defendant vehemently contended that there is an apprehension of theft of coffee, pepper and agricultural produce. To avoid these type of complications I feel to reject the application at this stage. Suppose, if the application is allowed which would cause great loss to the defendant than the plaintiff. With these observations I answered Point No.1 in the **NEGATIVE**.

11. **POINT NO.2**:- In view of the above said discussions and observations, this court proceed to pass the following:

O R D E R

**The I.A.V filed by the plaintiff under
section 151 of Civil Procedure Code is
hereby dismissed.**

No order as to cost.

*(Dictated to the stenographer directly on computer, then corrected,
signed and pronounced by me in open court on this the 17th day of
January 2024)*

sd/-

**(Pradip Potadar)
Addl. Civil Judge & JMFC.,
Virajpet**