

KAKL500019412022



**IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE
& JMFC, KGF, ITINERARY AT BANGARPET**

**PRESENT: K.A.NAGESHA, B.A.L,LL.B.
I ADDL. SENIOR CIVIL JUDGE & JMFC, KGF,
ITINERARY AT BANGARPET**

DATED THIS THE 27TH DAY OF JULY 2026

R.A. No.170/2022

APPELLANT

Sri. B.S. Prabhakar
S/o Late B.V. Sreeramulu Setty,
Aged about 73 years,
R/at No.4420/27,
5th Cross, Coronation Road,
Bangarpet-563114.

(By Sri.S.M.Kulkarni, Adv.)

V/s

RESPONDENT

Mohammed Irfanulla
S/o Mohammed Samiulla,
Aged about 44 years,
R/at No.2601/7, 1st Cross,
Near Mubarak Shadi Mahal,
C.Rahim Nagar,
Bangarpet-563114.

(By Sri. N. Jayaprakash, Adv.)

Date and nature of decree or order appealed against	Judgment and decree dated 03.06.2022 passed by Court of Prl. Civil Judge &
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	JMFC, Bangarpet in O.S.No.65/2013
Date of institution of appeal	14.09.2022
Date of judgment	27.07.2026
Total duration	Year/s Month/s Day/s 03 10 13

JUDGMENT

Defendant in O.S. No. 65/2013 on the file of the learned Prl. Civil Judge and J.M.F.C, Bangarpet has preferred this appeal challenging the judgment and decree dated 13/06/2022 decreeing the suit.

2. Respondent herein filed the suit for the relief of permanent injunction restraining the appellant/defendant from blocking the 'B' schedule property for ingress and egress to use the suit 'A' schedule property and to maintain the same. ***(Parties herein shall be referred to as per their rank before the Trial Court for the sake of convenience.)***

3. Plaintiff filed the suit asserting that he is the absolute owner and in possession of the suit 'A' schedule property consisting of building and shop premises having purchased the same under the sale deed dated

10/01/2011 from one Nisar Ahmed. Nisar Ahmed had purchased the same from B.S. Chalapathy as per the sale deed dated 10/02/2006. B.S. Chalapathy had purchased the same as vacant site and subsequently building was constructed. Sale deeds shows that Northern boundary of the suit 'A' schedule property is a passage, which is the suit 'B' schedule property. Plaintiff, being the owner of the suit 'A' schedule property is enjoying the same with all easementary right including using of passage i.e., 'B' schedule property existing between the suit 'A' schedule property and shop and building of the defendant. As such, neither plaintiff nor defendant has exclusive right over the suit 'B' schedule property. Plaintiff is using the suit 'B' schedule property for all legal and practical purposes to maintain the suit 'A' schedule as his vendor and vendor's vendor were doing. Defendant too, using this passage to maintain his building premises. Defendant has no exclusive right, title or possession over the suit 'B' schedule property connecting to the Coronation Road existing on the Western side of the same. On 04/03/2013, defendant came near the suit 'B' schedule property and tried to block the entrance of the same facing Coronation Road to prevent the plaintiff to use the same. However, plaintiff has resisted the illegal act of the defendant but the defendant has claimed that

he is going to block the suit 'B' schedule property in one way or the other using bricks or with rolling shutter and had stored the bricks near the property and further threatened with dire consequences if there is resistance by the plaintiff, hence he filed the suit for the aforesaid relief.

4. Defendant filed his written statement and counter-claim stating that his father B.V. Sriramulusetty got 4 children and died in the year 1998. Thereafter, properties left behind by his father were divided as per the registered Partition Deed dated 19/02/2001 in which this defendant acquired the 'C' schedule property as mentioned in the Partition Deed which is measuring East-West 20 feet and North-South 14.5 feet bearing Old Khatha No. 100, new Municipal Khatha No. 116 bounded by private property towards East, property of Sujatha towards West, property of Muralidhar towards North and vacant site towards South. Thereafter, defendant executed release deed dated 24/09/2001 in favour of his wife Sujatha and put her in possession. Behind the above said property, there is property measuring East-West 30 feet and North-South 14 feet 4¼ inches having old Khatha No. 19, new Khatha No. 112/100 which was acquired by the father of the plaintiff and he was in

possession of the same. In the partition, this property was fallen to the share of the defendant as per the Settlement Deed dated 28/01/1978. Defendant had executed Gift Deed dated 12/04/1999 in favour of his wife Sujatha and now she in possession and enjoyment of the same. Plaintiff is aware of the fact that defendant is in possession of this property which includes the suit 'B' schedule property. Vendor's vendor of the plaintiff had acquired the property measuring East-West 20 feet and North-South 11 feet 10 inches as per the partition deed. He had sold the property measuring East-West 50 feet and North-South 13 feet. He was not the owner of the said extent. Hence, neither plaintiff nor his vendor have acquired title over the excess property. In the total extent of 50 x 11 feet 10 inches, building is already constructed and no space is left which belongs to the plaintiff. As the passage is misused by unscrupulous persons by entering the passage for urinating in the area even though family members were present and sometimes liquor bottles were thrown in the passage making foul smell in the area. In order to avoid foul smell and trespassers entering into the passage, cleaning was done and maintained by this defendant for better use of the property. Though, plaintiff has no right over the property he is unlawfully interfering with the possession and enjoyment over the passage at

the instance of B.S. Chalapathy. This defendant is not the owner of the property and Smt. Sujatha is the owner, hence suit is not maintainable. Plaintiff has no right and possession over the suit 'B' schedule property. Plaintiff is interfering with the possession of the defendant's wife over the over the 'B' schedule property after filing the suit, hence defendant is seeking counter-claim of relief of permanent injunction.

5. Plaintiff filed written statement to the counter-claim of the defendant stating that in order to grab the suit 'B' schedule property, defendant has filed the counter-claim. Defendant has no exclusive right or possession over the suit 'B' schedule property. Both have easementary right to ingress and egress to maintain their premises, for construction or alteration in and over their respective buildings. Hence, defendant is not entitled to the relief as sought for by way of counter-claim.

6. Based on the pleadings, Trial Court framed the following issues.

ISSUES

1. Whether the plaintiff proves that is the owner and in possession of suit A schedule property?

2. Whether the plaintiff proves that he is enjoying suit B schedule property with all easementary right over the same to ingress and egress to the A schedule property?
3. Whether the plaintiff proves that the defendant is trying to Block the B schedule property?
4. Whether the plaintiff is entitled for permanent injunction against the defendant?
5. What order or decree

7. In order to prove the case, plaintiff was examined as P.W-1 and the documents produced by him were marked as Ex's. P-1 to P-8. Defendant was examined as D.W-1 and the documents produced by him were marked as Ex's.D-1 to D-6.

8. The Trial Court vide impugned judgment, decreed the suit and dismissed the counter-claim. As against the same, defendant has preferred this appeal on the following grounds;

- a) That, Trial Court has erred in decreeing the suit on facts and law and therefore same is not sustainable and liable to be set-aside.
- b) That, Trial Court has erred in not considering the fact that defendant was not all the owner of the adjoining property abutting the passage and therefore it has erred in decreeing the suit.
- c) That, Trial Court has erred in not framing issue based on the counter-claim of the defendant and has erred in not appreciating the fact that wife of the defendant is the real owner and the suit was filed only to harass the defendant and therefore same is liable to be set-aside.
- d) That, Trial Court has failed to appreciate the evidence in the proper perspective and proceeded to erroneously decree the suit holding that defendant has caused obstruction and therefore same is liable to be set-aside.
- e) That, Trial Court has erred in coming to the conclusion that plaintiff has proved his case and to decree the suit and further erred in holding

that defendant has failed to prove the counter-claim without framing the issues.

- f) That, Trial Court has erred in coming to the conclusion that he was obstructing the passage and that he has stored construction materials to block the passage without considering the Ex's.D-1 to D-6.

On these grounds, defendant prayed to set-aside the impugned judgment and to dismiss the suit.

9. Defendant has appeared before the Court through Counsel.

10. As there is delay in preferring the appeal, I.A. No-I is filed U/s 5 of the Limitation Act. As per the order dated 07/11/2022, this application came to be allowed by condoning delay.

11. In this appeal, appellant has filed I.A's-II and III U/o 41 Rule 27 R/w Section 151 of CPC seeking permission to adduce additional evidence by producing the documents viz.,

- 1) Representation given by Smt. B.P. Sujatha to Chief Officer City Municipal Council, Bangarpet dated 16/01/2013.
- 2) Permission Letter issued by Town Municipal Council, Bangarpet on 4/2/2013.
- 3) Receipt dated 7/2/2013 issued by Town Municipal Council, Bangarpet.
- 4) Notice dated 16.03.2013 issued by Town Municipal Council, Bangarpet.
- 5) Photographs (3 in numbers) with CD.
- 6) Copy of rental agreement.
- 7) Copy of encumbrance.

12. In the affidavits, appellant/defendant states that he has contended in the suit that he is not the owner of the passage i.e., suit 'B' schedule property. Now, he is producing some documents of his wife Sujatha, who is the owner of the said property. He has produced documents to show the existence of the door in front of the passage leading to Coronation Street along with photographs and CD. TMC has accorded permission to repair the walls and windows of the property belong to his wife which was in dilapidated condition. In order to overcome the permission and to harass him, suit was filed. These documents were not filed earlier as he was

under impression that his wife was not a party. He had given his family property on rent on 21/11/2025 for advance amount of Rs. 1,00,000/- and rent of Rs. 3,000/-. These documents goes to the root of the matter and relevant for just decision in the matter and hence necessary to produce them as additional documents. He could not produce these documents earlier on account of bonafide reasons, hence prayed to allow the same.

13. Respondent has filed objection contending that these documents are not relevant to the case and same belongs to the wife of the defendant and the Municipality. Photographs of the 'B' schedule property are not necessary to adjudicate the appeal. No additional evidence is necessary to decide the appeal. As per the settled position of law, appellant is not entitled to produce these documents.

14. Heard the learned counsel for the parties. Entire records in O. S. No 65/2013 is secured from the Trial Court and perused.

15. Under the circumstances, following points arises for consideration.

POINTS

- 1) *Whether the defendant proves that Trial Court has not properly considered the evidence available on record and thereby erred in decreeing the suit holding that plaintiff has proved that suit 'B' schedule property is used by the plaintiff to repair and maintain the suit 'A' schedule property?*
- 2) *Whether the defendant has made out grounds to permit him to adduce additional evidence by producing the documents as sought for in the I.A's. II & III?*
- 3) *Is it necessary to interfere with the judgment and decree passed by the Trial Court?*
- 4) *What order?*

16. The points framed for consideration are answered 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 the final order,
for the following;

REASONS

17. **POINT No.1:-** According to the plaintiff, he is the owner and in possession of the suit 'A' schedule property which is a commercial building and he is using the 'B' schedule as passage for ingress and egress to reach the suit 'A' schedule property for the purpose of maintaining the same for repair work and the defendant is trying to block the said passage.

18. In order to prove the possession and enjoyment over the suit 'A' schedule property, plaintiff has relied upon the sale deed dated 10/01/2011 as per the Ex.P-3, which he had purchased the same from Nisar Ahmed. In this document, measurement and boundaries of the property is mentioned as mentioned in the plaint schedule. Apart from this, he has produced the sale deed of his vendor executed by one Chalapathy dated 10/02/2006 as per Ex.P-4. He has further produced the sale deed of his vendor's vendor as per Ex.P-5 dated 31/03/1971 which was executed by Sriramulusetty in favour of Chalapathy. Even in the Ex's.P-4 and P-5, property numbers and boundaries are mentioned as mentioned in the plaint schedule property. Apart from the above referred documents, he has produced the photographs as per Ex's.P-6 and P-7. He has produced

the self assessment tax declaration Form and tax paid receipts as per Ex's.P-1 and P-2.

19. In the written statement, though defendant has raised objection regarding measurement of the property of the plaintiff nothing worth is elicited in the cross-examination of the P.W-1. On the other hand, defendant himself has suggested to the P.W-1 that plaintiff has purchased the property from Nisar Ahmed which is measuring 50 x 13 feet and also suggested the boundaries which are mentioned in the plaint schedule. More particularly it was suggested that there is passage towards Northern side of the schedule property. It was suggested that plaintiff is in possession of the extent mentioned in the sale deed. It was suggested that passage is measuring 50 x 8 feet. P.W-1 has denied the suggestion that his vendor Nisar Ahmed was not using the passage.

20. On the other hand, D.W-1 in his cross-examination has admitted that Sriramulusetty is his father and Chalapathi is his brother. He has admitted the suggestion that his father had sold the property measuring 50 x 13 feet as per Ex.P-5 in favour of Chalapathi and Chalapathi had constructed building. He

admitted the suggestions regarding boundaries of the property sold and that Northern boundary of the plaintiff's building is a passage and thereafter his (defendant) property comes. This passage is situated between his property and property of the plaintiff and same is measuring 50 x 8.3 feet. Neither plaintiff nor himself are having right to put of construction over the passage and both have right to use the same as passage. His brother Chalapathy was using the 'B' schedule passage when he was the owner of the 'A' schedule property and that his brother had sold the suit 'A' schedule property to Nisar Ahmed on 10/02/2006 and Nisar Ahmed had sold the same to the plaintiff on 10/01/2011. In these sale deeds, Northern side boundary is mentioned as passage. It is admitted that he has no exclusive right over the suit 'B' schedule property. This passage is left for the purpose of carrying out repair works in the building of plaintiff and himself.

21. Above referred to documentary evidence i.e., Ex's.P-3 to 6 and oral evidence of the parties clearly discloses that plaintiff is in possession of the suit 'A' schedule property as absolute owner and towards Northern side of this property, suit 'B' schedule property i.e., passage measuring East-West 50 feet and North-

South 8.3 feet is situated and same is being used by both parties to the suit to repair their respective buildings. Towards the Northern side of the passage i.e., 'B' schedule property, defendant is having his property. Further, photographs produced by the P.W-1 as well as the D.W-1 as per Ex's.P-6, P-7, D-1 and D-2 clearly establishes the existence of the properties of the plaintiff, defendant and the suit 'B' schedule passage.

22. When it is admitted by the D.W-1 that he himself and the plaintiff are using this passage to carry out repair work of their respective buildings and having admitted that he has no exclusive right, he cannot object the plaintiff to enter this passage for the said purpose. The material available on record shows that defendant had collected materials to block this passage. Even though D.W-1 has deposed that he was only repairing the old wall, nothing is forthcoming in that regard. On the other hand, Ex.P-6 photograph clearly shows that defendant has collected the bricks in front of the passage. Hence, under the facts and circumstances it could be presumed that defendant had collected the materials such as bricks for the purpose of blocking the passage.

23. It is true that, Trial Court did not frame specific issue based on the Counter-claim of the defendant. However, on careful perusal of the written statement, this Court is of the opinion that defendant has not furnished the schedule to the counter-claim. He has only pleaded that he had executed registered Release Deed in favour of his wife Sujatha with respect to the property bearing Old Khatha No. 100 new Municipal Khatha No. 116 measuring East-West 20 feet and North-South 14.5 feet bounded by private property towards East, property of Sujatha towards West, property of Muralidhar towards North and vacant site towards South. Defendant has further pleaded that he had acquired the property measuring East-West 30 feet and North-South 14 feet 4½ inches in Old Khatha No. 19, new Khatha No. 112/100 as per the settlement deed dated 28/01/1978 and had gifted the same to his wife Sujatha as per the Gift Deed dated 12/04/1999. Hence, it is clear that defendant has mentioned about 2 separate properties but did not specifically mention as to which property he is seeking the relief of permanent injunction against the plaintiff by way of counter-claim. Probably, under the said circumstances Trial Court did not frame specific issue. The defendant without raising any objection in this regard before the Trial Court and having

adduced evidence and suffered decree now cannot contend that impugned judgment is erroneous on this ground alone.

24. Hence, overall consideration of the materials available on record shows that plaintiff being the owner of the suit 'A' schedule property is using the suit 'B' schedule passage mainly for the purpose of repairing his building as and when required as same was carried on by his vendor and vendor's vendor. On the other hand, defendant and his wife having property on the other side of the suit 'B' schedule passage are also using the same to carry out repair work in their house. It is forthcoming from the pleadings and evidence that, defendant has caused obstruction to the plaintiff from using the suit 'B' schedule passage without having exclusive right over the same. Under the circumstances, plaintiff has approached the Court for the relief of permanent injunction and has successfully proved his assertion. On the other hand, defendant has failed to prove his contentions and also to establish his case as pleaded for the relief of permanent injunction sought for him in the counter-claim. This makes it clear that, Trial Court has rightly appreciated the materials placed on record by the parties in the

proper perspective. Accordingly, point No.1 is answered in the negative.

25. **POINT No.3:-** Defendant has filed the I.A's II & III U/o 41 Rule 27 of CPC seeking permission to adduce additional evidence by producing the documents viz., representation given by Smt. B.P. Sujatha to Chief Officer City Municipal Council, Bangarpet dated 16/01/2013, permission Letter issued by the TMC on 4/2/2013, receipt dated 7/2/2013 and notice dated 16.03.2013 issued by TMC, Photographs, C D, Copy of rental agreement and Copy of encumbrance.

26. Perusal of the above documents and the affidavits annexed to the applications shows that they were available with the defendant during the pendency of the suit and as on the date of recording his evidence before the Trial Court. As rightly objected by the plaintiff, these documents pertain to the property of Smt. Sujatha and the TMC Bangarpet. These documents are not at all related to the suit 'B' schedule property. Further, these documents are not at all necessary to adjudicate the matter in controversy between the parties as there are sufficient materials are available on record to adjudicate the disputed questions. Hence, it is held that defendant

has failed to make out the grounds available U/o 41 Rule 27 (1)(a)(aa)&(b) CPC to permit him to adduce additional evidence by producing the documents as sought for. Accordingly, Point No.2 is answered in the negative.

27. **POINT No. 3:-** Perusal of the impugned judgment shows that Trial Court has rightly appreciated the entire materials available on record in the proper perspective. It has considered the oral and documentary evidence of both the parties and has arrived at proper conclusion to answer the issues framed for consideration and against the defendant. In this appeal, in spite of considering the entire materials available on record and taking note of the grounds urged by the appellant, there is no scope for interference with the impugned judgment. Accordingly, point No.3 is answered in the negative.

28. **POINT No. 4:-** In view of answering the points No.1 to 3 in the negative, appeal preferred by the defendant is to be dismissed. Hence, I proceed to proceed to pass the following;

ORDER

Appeal preferred by the defendant in O.S. No.65/2013 on the file of the learned Prl. Civil Judge and JMFC, Bangarpet U/s 96 of CPC is hereby dismissed with costs.

Impugned Judgment and decree passed by the learned Prl. Civil Judge and JMFC, Bangarpet in O.S. No. 65/2013 dated 13/06/2022 is hereby confirmed.

Draw decree accordingly.

Office is directed to immediately return the entire records in O.S. No. 65/2013 to the Trial Court along with the copy of the judgment and decree of this appeal.

(Dictated to Stenographer directly on computer, typed by him, corrected by me & then pronounced in open court on this the 27th day of July 2026)

Sd/-

(K.A. NAGESHA)

**I ADDL. SENIOR CIVIL JUDGE & JMFC,
KGF, ITINERARY AT BANGARPET**