

KAKL510028822021



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,
AT K.G.F.

PRESENT: **Sri.VINOD KUMAR.M** BAL,.LLB,LLM.,
I ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

O.S. No.336/2021

DATED THIS THE 16th DAY OF DECEMBER - 2022

1. Sri. K.S.Gopi,
S/o Srinivasa Reddy,
Aged about 33 years,

2. Sri. Nallappa Reddy,
S/o late Papi Reddy,
Aged about 60 years,

3. Sri. Karunakara.K
S/o late Kuppuswamy,
Aged about 48 years,

4. Sri. Ashwathnarayana Reddy,
S/o Thimma Reddy,
Aged about 30 years,

5. Sri. Sonnappa,
S/o late Krishnappa,
Aged about 40 years,

6. Sri. Naveen Kumar,
S/o Venkateshappa,
Aged about 40 years,

7. Sri. Prasad.K.M

S/o Muniramaiah,
Aged about 48 years,

8. Sri. Annaiah Reddy,

S/o late Doddathippa Reddy,
Aged about 70 years,

9. Sri. Guruva Reddy,

S/o late Chikkathippa Reddy,
Aged about 75 years,

10. Sri. Krishna Reddy,

S/o late Doddagantla Reddy,
Aged about 45 years,

11. Sri. Ramesh,

S/o late Krishnappa,
Aged about 48 years,

12. Sri. Anantha Reddy,

S/o late Dodda Thippa Reddy,
Aged about 61 years,

All are R/at:

Kogilahalli Village,
Bethamangala Hobli,
K.G.F Taluk, Kolar District.

... Applicants/Plaintiffs
(By **Sri. K.P.M.**, Advocate.)

V/s

Sri. K.V.Rame Gowda,

S/o late Venkataramappa,
Aged about 27 years,
R/at: Kogilahalli Village,
Bethamangala Hobli,
K.G.F. Taluk, Kolar District.

.... Opponent/Defendant
(By **Sri. N.S.**, Advocate.)

COMMON ORDERS ON IA No.4 U/Sec.144 R/w Sec.151
of CPC and IA No.6 U/O 39 RULE 7 R/w ORDER 18
RULE 18 R/w Sec.151 OF CPC

At the stage of to hear on IA No.1 and 2, the Applicants/Plaintiffs have filed an IA.No.4 U/Sec.144 R/w Sec.151 of CPC praying to direct the Defendant to restore the suit property as on the date of suit for using the road by villagers to transfer agricultural produce to the market, in the interest of justice and equity.

The Applicants/Plaintiffs have filed an IA.No.6 U/O 39 Rule 7 R/w Order 18 Rule 18 R/w Sec.151 of CPC praying to inspect the spot in order to ascertain the existence of cart road, in the interest of justice and equity.

2. In support of IA No.4 sworn in the affidavit by contented that, they filed suit in the nature of representative capacity in respect of cart road using for common object by villagers. They and Defendant are resident of Kogilahalli Village. There is a existing cart road using for common object by villagers to reach the markets. The said road was formed in Sy.No.76/1, 78/1, 82 and 83. After formation of cart road, the Kogilahalli villagers were using the said road to reach city and market for supplying the agricultural produces since 1989. They have made representation before Deputy Commissioner of Kolar in order to interference by Defendants to obstruct the said cart road. After that, the DC of Kolar had directed to Tahasildar of

K.G.F to comply the order. But, the Defendant caused damages to cart road by using JCB with an intention to not use the cart road by villagers. Even though, the Defendant has no any absolute right, title or interest over cart road existing in suit property. They have made out prima-facie case and balance of convenience in their favour. If an order of restoration is not pass, they will be put irreparable loss and injury by way of perished the agricultural produces. Hence, they prays to allow the application.

3. Per contra, the Defendant filed objections to present application by denying the contents made in para No.2 to 15 of the affidavit to support of IA No.4 inter-alia contended that, the application is not maintainable either in law or on facts. It is further that, there is no cart road formed in existence Sy.No.76/1, 78/1, 82 and 83 as claimed by the Plaintiffs in the village. There is no question of restoration of said road. The village map roads has been fully developed and villagers as well as Plaintiffs are not been put any trouble by using the said road to reach Kogilahalli Village. The Plaintiffs have made false complaint before MLA of K.G.F after he put up barbed wire fencing around property and MLA came to spot and inspected that, Plaintiffs cannot demand for road in private land except available road in the village map, which should be use by Plaintiffs. The Plaintiffs have no right, title or possession over suit property. The suit filed in the year of 2021, but Plaintiffs filed this application after fenced the suit property with barbed wire by him. The Plaintiffs are falsely

claiming cart road in his property. He is owner in possession of Sy.No.83 and raising crops. There is no question of forming road in his property by seeking restoration of the alleged road. On these ground, he sought for dismissal the application.

4. In support of IA No.6 sworn in the affidavit by contented that, they filed suit in the nature of representative capacity in respect of cart road using for common object by villagers. They and Defendants are resident of Kogilahalli Village. There is a existing cart road using for common object by villagers to reach the markets. The said road was formed in Sy.No.76/1, 78/1, 82 and 83. After formation of cart road, the Kogilahalli villagers were using the said road to reach city and market for supplying the agricultural produces since 1989. There is no road is in existence which connects to Bethamangala – Mulbagal Road. To ascertain the facts of existence cart road on physical features only to inspect the suit property by court and decide the matter effectively. In the absence of court, the court can appoint the court commissioner to inspect the same for the purpose of deciding the matter in issue. If the commissioner is appointed, no hardship would be caused. If the application is not allowed, the entire villagers or general public will be put to loss which cannot be compensated in any terms. Hence, they prays to allow the application.

5. Per contra, the Defendant filed objections to present application by denying the contents made in para No.2 to 8 of the affidavit to support of IA No.6 inter-alia contended that,

the application is not maintainable either in law or on facts. It is further that, there is no cart road formed in existence Sy.No.76/1, 78/1, 82 and 83 as claimed by the Plaintiffs in the village. His father has not signed to the alleged agreement stated by Plaintiffs. The Plaintiffs are illegally interfering with his property and he covered his land with barbed wire fenced. The number of road available to Kogilahalli Village from Mulbagal Road and villagers in the village map. There are 4 roads to reach Kogilahalli Village as per village map. The Plaintiffs have made false complaint before MLA of K.G.F after he put up barbed wire fencing around property and MLA came to spot and inspected that, Plaintiffs cannot demand for road in private land except available road in the village map, which should be use by Plaintiffs. The Plaintiffs have no right, title or possession over suit property. The suit filed in the year of 2021, but Plaintiffs filed this application after fenced the suit property with barbed wire by him. The Plaintiffs are falsely claiming cart road in his property. He is owner in possession of Sy.No.83 and raising crops. On these ground, he sought for dismissal the application.

6. Heard the argument of learned counsel for the Plaintiffs and learned counsel for Defendant with documents. Perused the available on records.

7. Now the points that arise for my consideration are as under:

Point No.1: Whether the Plaintiffs have made out sufficient grounds to restore the suit property as contended in application?

Point No.2: Whether the Plaintiffs have made out sufficient grounds to inspect the spot by the court or court commissioner?

Point No.3: What order?

8. My findings on the above said points as here under :

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

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

Point No.3 : As per final order for the following :-

:: REASONS ::

9. **Point No.1 and 2:** Both point are interconnected each other in order to issue raised by Plaintiffs in respect of ascertain the existence of cart road. Thus, both points taken together for common discussion. This is the suit filed by the Plaintiffs against Defendant in the representative capacity for the relief of interfering with right of using cart road over suit schedule property.

10. The learned counsel for Plaintiffs argued that, there is a existence of cart road in suit property for using by the Kogilahalli villagers for common object. There is no other cart

road except cart road in suit property to reach Kogilahalli Village and supplying the agricultural produces to the market. The Defendant has put up barbed wire fence around Sy.No.83 in the existence of road to the villagers. After filing of the suit, the Defendant has damaged the cart road by JCB with an intention to not use the cart road by the villagers. If the inspect the spot by the court or court commissioner in order to ascertain the existence of cart road in suit property only helpful to decide the case effectively and restore the suit property as it is at the time of filing of the suit. On these ground, the counsel for Plaintiffs prays to allow the two applications.

11. Per contra, the counsel for Defendant argued that, there is no existence of cart road in suit property. The Sy.No.83 of suit property belongs to Defendant as private property. The Defendant has put up fenced with barbed wire around Sy.No.83 of suit property. If the restore the property as sought by Plaintiffs, the court can admits the road was existence it amounts to decree the suit. There are 4 available roads in village map to reach Kogilahalli Village by the villagers. No documents is produced to show the road is existence in Sy.No.83 of Defendant property. On these ground, the counsel for Defendant prays to dismissal the two applications.

12. It is specific contention of Plaintiffs that, there is a existence of cart road in suit property bearing Sy.No.76/1, 78/1, 82 and 83 property belongs to Defendant. The said road

was formed in the year of 1989 and using the villagers for common object. But, the Defendant has closed the road in Sy.No.83 with barbed wire fence around said property and damaged the road by using JCB. Since, there is no other roads to reach Kogilahalli village or market except suit property. On these ground, restore the suit property by Defendant as on the date of suit and inspect the spot in order to ascertain the existence of the cart road or features of the road using by villagers through court or court commissioner. On other hand, the Defendant specifically contended that, there is no cart road formed in Sy.No.76/1, 78/1, 82 and 83. There are 4 roads in the village map to reach Kogilahalli Village. If the cart road is not existence the question of restore the suit property does not arise. It is further that, he has put up barbed wire fenced around property bearing Sy.No.83. In the absence of road, the question of restore the suit property and inspect the spot does not arise.

13. I have gone through the entire plaint and documents produced by the Plaintiffs it clearly goes to show that, the Plaintiffs filed suit in representative capacity against Defendant from interfering with using cart road in Sy.No.76/1, 78/1, 82 and 83. The said cart road was formed in the year of 1989 for using common object by the Kogilahalli Villagers. Admittedly, except Sy.No.83 belongs to Defendant, no one has objected to cart road using by villagers for common object. On other hand, the Defendant specifically contended that, there is

no cart road in Sy.No.83 belongs to his property. Such being, question of restoration and inspect the spot does not arise.

14. The learned counsel for Plaintiffs has produced the documents about number of representation made before revenue authority i.e., DC of Kolar, CPI of Bethamangala and Gollahalli Grama Panchayath stating that, they using the cart road since 30 years ago for common public use by the Kogilahalli Villagers. But, the Defendant has tried to close the cart road upon political grudge. From perusal of documents produced by the Plaintiffs, there is nothing documents to show the reply given by revenue authorities for their representation except photos seems existence of road.

15. On other hand, the Defendant specifically contended that, there is no existence cart road in Sy.No.83 belongs to his private land and fenced the barbed wire around property. There are 4 roads available in the village map for common use by the Plaintiffs and Kogilahalli Villagers. The learned counsel for Defendant has produced the number of letters given by Tahasildar of K.G.F, Deputy Tahasildar of K.G.F and Statement of Villagers includes Village Map clearly establish that, there is an existence of cart road on Sy.No.78, 81, 80, 1, 2, 86, 87, 73, 72 and 70 to reach Kogilahalli Village by the villagers as per road available in village map. Even after, surveyed the existence of roads, there are found 4 roads to reach Kogilahalli village as cart road for ingress and egress to the village for common usage by the villagers. The learned

counsel for Defendant has rightly pointed out that, there is no existence road in Sy.No.83 belongs to Defendant's private property, which also stated by revenue authorities at the time of conducting survey. From the perusal of letter issued by Tahasildar of K.G.F dated 16-08-2021 clearly reveals that, there is no existence of road in Sy.No.83, since it is private land belongs to Defendant. The representation made by Plaintiffs also sought for Survey/Nakashe Road towards Sy.No.78, 81, 80 in one road, Sy.No.1, 2, 86 and 87 in one cart road, Sy.No.78, 73, 71, 70 and 81 in one cart road and Sy.No.13, 14, 7, 68 and 69 in another cart road. The claiming of road by the Plaintiffs also has rightly pointed out by learned counsel for Defendant in his argument and shown in the village map. From the village map clearly reveals that, there are several available roads to reach Kogilahalli Village for using by villagers, but the Plaintiffs sought for cart road available in Sy.No.83 belongs to private property of Defendant. Since, there is no existence of road in Sy.No.83 belongs to Defendant as rightly contended in their arguments and objections. On perusal of documents produced by the Defendant crystal clear that, revenue authority i.e., Tahasildar and Surveyor have resolved the issue in respect of no cart road available in Sy.No.83 belongs to Defendant private property.

16. In the two applications, the Plaintiffs claims to restore the suit property in view of Defendant caused damaged to suit property for not using by villagers through JCB and inspect the spot by the court or through court commissioner in order

to ascertain the existence of cart road and features of the road. With regards to restoration of the suit property, the Plaintiffs invoked U/Sec.144 of CPC. I am relying Sec.144 of CPC reads as hereunder: ***Application for restitution – 1) where and in so far as decree or order, varied or reversed in the appeal, reversion or other proceedings is to set aside or modified in any suit instituted for the purpose, the court which passed the decree or order shall on the application of any party entitle to any benefit by way of restitution or otherwise.***

By close reading of Sec.144 of CPC would only applies if by virtue of order or decree of the court something was done. In the instant case, the court has not passed any order or decree in present suit at any point of time. On these ground, the question of restitution of suit property sought by Plaintiffs does not arise. The Plaintiffs have invoked wrong provision U/Sec.144 of CPC without proper application to the present facts of the case. In the absence of existing cart road in Sy.No.83 belongs to Defendant, the court cannot possible to inspect the suit property in any manner as claimed by Plaintiffs in their application. On the above grounds, the Plaintiffs have not made out prima-facie to restore the suit property and inspect the same in order to ascertain the existence of cart road in Sy.No.83 belongs to Defendant's private property through court or court commissioner.

Accordingly, I have answered to **Point No.1 and 2 in the Negative.**

17. Point No.3 : In view of above discussion and conclusion to Points No.1 and 2, this court proceed to pass the following:-

ORDER

The Plaintiffs filed IA No.4 U/Sec.144 R/w Sec.151 of CPC and IA No.6 U/O 39 Rule 7 R/w Order 18 Rule 18 R/w Sec.151 of CPC are hereby dismissed.

No order as to costs.

(Dictated to the stenographer directly on computer and typed by him, corrected, signed by me & then pronounced in the open Court on this the **16th day of December – 2022**)

Sd/-

(VINOD KUMAR M.)

I ADDL. CIVIL JUDGE & JMFC.,
K.G.F.