

IN THE COURT OF ADDL. CIVIL JUDGE & JMFC,
NAGAMANGALA

Dated this the 5th day of April 2019

Present: Sri. Devaraddy, B.A. LL.M.,
Addl. Civil Judge & JMFC,
Nagamangala.

O.S. 188/2018

- Plaintiffs:**
1. Gowramma W/o late Ramegowda,
Aged about 50 years.
 2. Thimmegowd S/o late Ramegowda,
Aged about 36 years.
 3. Prakash S/o late Ramegowda,
Aged about 34 years.

The Plaintiffs No.1 to 3 are
Residing at Bidarakere village,
Bindianavile hobli,
Nagamangala taluk,
Mandya district.

(Sri. KGLS. Advocate)

-VS-

- Defendants :**
1. Nanjundegowda
S/o late Kempegowda,
Aged about 65 years.
 2. Jayalakshamma
W/o Nanjundegowda,
Aged about 60 years.
Both are R/o Bidarakere village,
Bindiganavile hobli,

Nagamangala taluk,
Mandya District.

(By Sri. B.S. Advocate)

PARTIES TO I.A.I.

Applicant: Nanjundegowda and another.

-VS-

Opponent: Gowramma and others.

ORDERS ON I.A.No.4

1. Defendant No.1 has filed the interim application under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC, seeking the relief of restraining the plaintiffs, their agents, servants or anybody claiming under them from obstructing the defendants for using the road attached to their main door at I- Schedule property and by removing the stone boulders poured by plaintiffs till disposal of the suit.

2. In the affidavit accompanying the application, he stated that the defendants used the road of 'I'-schedule property to go to their residential house. The plaintiffs approached the court with ulterior motive to get the road margin in between their

properties. Since 1985 the defendants enjoying their properties without any interruption but the plaintiffs recently making a demand of leaving a road in between defendants properties as per J-schedule property marked in the rough sketch. The plaintiffs by their illegal act forcefully restraining them to making the use road margin situated at eastern side of their main door of the residential house. He further stated that it is the duty of the plaintiff to remove all the stone boulders poured in the 'T'-schedule property by blocking their main door of residential house. If any road is formed in between defendants properties the very purpose of purchasing the properties would be defeated. He further stated that even the police persons have not taken any action against the plaintiffs about their illegal act. Therefore it is just and necessary to ascertain the existing situation in 'T'-schedule road by appointing a court commissioner to submit the commissioner report along with sketch of present status of the 'T'-schedule road. The defendant further stated that himself and defendant No.2 have got good case on merit and balance of convenience is also in their favour.

3. The plaintiff no 2 has filed his objections to the said Interim application and contended that the defendant No.1 is himself admitted in his very application that ' by removing the stone boulders poured by the plaintiffs in the suit I-schedule property as shown in the rough sketch. Hence, without seeking relief of mandatory injunction by paying the proper court fee the present relief which is sought by the 1st defendant is not sustainable in eye of law and on facts. Hence, he prays to reject the said I.A. with exemplary costs.

4. Heard the arguments on both sides. Perused the records.

5. On the basis of above contention, the following points arise for my consideration.

- i. *Whether the defendant No.4 makes has made out a prima facie case?*
- ii. *Whether the defendant No.4 proves that the balance of convenience tilts in his favour?*
- iii. *Whether the defendant No.4 proves that the irreparable loss or injury lies in his favour?*
- iv. *What order?*

6. My findings to 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 : As per the final orders
for the following;

REASONS

Point No.1:

7. It is the suit of the plaintiff for declaration of easement rights and permanent injunction for restraining the defendants or their agents, servants, henchmen or anybody claiming under them from not to interfere with the plaintiff's peaceful possession and enjoyment and usage of the schedule I, J and K properties as shown in the rough sketch.

8. The 1st defendant has filed I.A. No.IV U/O 39 R. 1 and 2 r/w Sec. 151 of CPC., seeking the relief restraining the plaintiffs, their agents, servants or anybody claiming under them from obstructing the defendants for using the road attached to their main door at I- Schedule property and by removing the stone boulders poured by plaintiffs till

disposal of the suit.

9. The learned counsel for the defendants submit that the plaintiffs without any right and interest over the said road interfering and stone boulder poured by the plaintiffs. If the present application is not allowed then the rights of defendants would be deprived over the 'T'-schedule property and which will be leads multiplicity of proceedings and damages cannot be compensated by any means. Hence, he prays to allow the said application.

10. The learned counsel for the plaintiffs submit that the defendants cannot entitle the relief under said order unless he sought the main relief against the plaintiffs.

11. At this juncture could not able to decide the said application on merit without going through evidence of plaintiffs and defendants. Moreover, At this stage no materials placed on record to show that the plaintiffs by

their illegal act forcefully restrained the defendants in respect of using the road which is situated at 'I' – Schedule property and stone boulder poured by them.

12. Therefore, the defendants failed to show that he has made out prima-facie in their favour. Accordingly, point No.1 is answered in Negative.

13. Point No.2 and 3 : In the absence of prima-facie materials on behalf of defendants, the balance of convenience not lies in favour of the defendants. *Further questions of balance of convenience and irreparable loss need not be considered since the defendants failed to show prima facie in his favor. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction.*

14. Since, as the prima facie case is not made out and the question of balance of convenience and irreparable

loss and injury does not arise to grant the temporary injunction. Accordingly, I answer Point No. 2 and 3 in Negative.

15. Point No. 4:- For the reasons stated in point no 1 to 3 , this court proceed to pass the following;

ORDER

I.A.No.IV filed by the applicant under order 39 rule 1 and 2 r/w Sec. 151 of CPC is hereby rejected.

(Dictated to Stenographer through on-line computer, corrected and then pronounced by me in Open Court, on this the 5th day of April 2019).

(Devaraddy)
Addl.Civil Judge & J.M.F.C,
Nagamangala.

Order ready and pronounced in the open
Court vide Separate order

ORDER

*I.A.No.IV filed by the applicant under
order 39 rule 1 and 2 r/w Sec. 151 of CPC is
hereby rejected.*

Addl. Civil Judge & JMFC,
Nagamangala.