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IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 01ST DAY OF MARCH 2025

O.S./93/2024

Plaintiff : Murthy

-V/s-

Defendants : Sujatha and others

I.A. No.1 & 3

Applicant : Murthy

--- Plaintiff

-V/s-

Opponents : Sujatha and others

--- Defendants

ORDER ON IA NO.1 AND 3 FILED U/O 39 R-1 AND 2 R/W
SEC. 151 OF C.P.C

These applications have been filed and came to be registered by the applicant/plaintiff herein. Further in these applications, the applicant has sought for an order of injunction temporarily so to restrain the defendants, their agents or anybody acting on their behalf from causing any interruptions in respect of the cart track and also the movement of the plaintiff to reach their properties for the purpose performing and also doing agricultural activities.

2. Further according to the applicant, who has filed his two affidavits. Wherein he has submitted on oath that, the suit schedule properties are purchased by the plaintiff herein from one late. Basavaraju.H.N. his daughter Puttalakshamma and her children through the registered sale deed dated 09.03.2021. Towards the eastern side of the schedule item No.1 property, the property of the 1st defendant is in existence and towards west the property of one Prashanth S/o Padmanabha, North by the property of Ravi and Kumara the defendant No.5 and 6 and south by property of one Gurujyothi Film theater Nanjundappa.

3. Further according to the applicant, he being the owner of the properties having been purchased, presently he has been utilizing and also occupying the said property and he has been carrying out conducting the agricultural activities and operations. Further, the property of the defendants are comes towards the eastern side and northern portion of the property of the plaintiff. The defendants being the adjacent land owners, they are causing heavy obstructions and also interception for the movement and usage of the road, way cart track for the purpose of carrying out the agricultural products so to perform the agricultural activities. Except the road, way and cart track which is existed and persisted towards the eastern and northern portion and region of the defendants property, the plaintiffs are having no alternate or substitute way to reach the schedule property and they have been using the said pathway to reach the schedule properties from the date of the purchase. However, the

defendants are causing heavy hindrance and obstructing the movements by erecting and fencing the properties of the defendants resulting the right of way of the plaintiff to reach his properties has been distrusted and curtailed. Hence, the application has been filed for the purpose of directing the defendants not to cause any obstructions and hindrance pertaining to the cart track or way which is existed towards the eastern and northern side of the defendants property so to reach and carry out the agricultural activities of the plaintiffs. Hence, prays for allowing the applications.

4. The present applications have been protested and they were challenged and countered by the defendants who have filed their statements, wherein they have disputed, denied and also negated the views, expression and the contention of the plaintiff that has been averred and pleaded in the applications. Further according to the defendants, the applications are not maintainable, the same being false frivolous and untenable. According to the defendants, the property of the defendant No.1 is not situated towards the eastern side of the plaint schedule properties which in fact falsely claimed by the plaintiff. Further according to the defendants, the 1st defendant has purchased the land bearing Sy.No. 26/6 to an extent of 23.08 guntas of land situated at Hampapura Village, Hosa Agrahara Hobli, K.R.Nagar Taluk, and from the date of purchasing the property, the 1st defendant is in peaceful possession and enjoyment over the same. Wherein in the said property, the 1st defendant constructed residential RCC house and residing over the property along with her family

members. Further, according to the defendants neither the plaintiff nor the defendant No.1 are adjacent land owners in any manner and therefore, the plaintiff using land of the defendant No.1 for the purpose of reaching and accessing the property of the plaintiff does not arise at all.

5. Further it has been pleaded in the objections that, the suit has been filed with oblique motive without there being any basis and documents supporting the views expressed by the plaintiff. Further towards the west of the defendant No.1, the property of the vendors of the defendant No.1 in Sy.No. 26/3B to an extent of 23 guntas of property is in existence. Therefore, the alleged claim of the plaintiff that, eastern side of the defendant No.1, the plaintiff accessing the right of way is not in existing. Further, the plaintiff and the other persons with ill intention manipulated the survey sketch and they have presented these applications with false allegations falsely claiming the road and pathway towards the northern side of the property. Further, according to the defendants, the plaintiff had an accessibility towards the northern side of the property and the same has been concealed and hidden by the plaintiff with the ulterior motive and the alleged common way, cart track towards the eastern side of the defendant No.1 property is not in existence.

6. Further according to the defendants, on account of interference made by the defendants herein, the defendant No.1 preferred the suit in O.S. No. 252/2022 before the Hon'ble Addl. Civil Judge & JMFC., K.R.Nagar, and the said suit came to be

decreed on 05.04.2023. The plaintiff concealing the said fact, he has preferred the suit having rift and vengeance regarding the earlier suit. Therefore, the defendants sought for dismissal of the applications.

7. Thereafter both the counsels representing the rival parties addressed their arguments on the applications and also this court perused and verified the pleadings stated in the plaint, applications, objections and also the documents produced and placed before this court.

8. The following points arise for this court's consideration in both the applications.

1) Whether the applicant/plaintiff made out that, he has got a prima-facie case on hand?

2) Whether the applicant further made out that, the balance of convenience lies in his favour?

3) Whether the applicant further made out that, it will cause untold hardship and irreparable damages to him, if the present applications are not allowed?

4) What order?

9. This court findings on the above points for consideration in both applications are as under:

Point No.1 : Partly in the Affirmative

Point No.2 : Partly in the Affirmative

Point No.3 : Partly in the Affirmative

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

REASONS

10. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

11. Upon appreciating the pleadings along with the materials placed before this court, while adjudicating and deciding the applications which is filed U/o 39 R-1 and 2 of C.P.C., the relevant factors to be considered by the court is regarding existence of prima-facie factors and case which involves finding of facts as to whether a case for trial is made out and also whether other factors requisite for grant of injunction exists. Further, the court has to consider the balance of convenience in respect of the parties and irreparable injuries or loss if any, that may be suffered by the plaintiff in the case of refusal to grant injunction.

12. As per the very pleadings of the plaintiff, admittedly the revenue entries are presently standing in the name of the plaintiff in respect of the item No.1 and 2 of the application schedule properties. Further, the defendants in their statements, they have not disputed the right of the plaintiff on and over the schedule properties. According to the plaintiffs he has purchased the schedule properties and from thereafter, he has

occupied the property and he has been in settled peaceful uninterrupted possession over the schedule property. Further according to him, towards eastern and northern region of the property of the plaintiff, there exists the properties of the defendant No.1 and defendant No.5 and 6 through which the plaintiff is accessing the common path, way and cart track for the purpose of transporting the agricultural appliances to the property of the plaintiff which has been utilized and enjoyed by the very plaintiff from the date of purchasing the property and except the said right of way in the property of the defendants, the plaintiff has no other pathway or alternative way or road for the purpose of accessing and using to reach his property. However, recently his right of way and easement was abridged and it was intercepted, where according to the plaintiff, as per the recitals and incubation, his way was obstructed by the defendants by fencing around the properties resulting heavy and greater hindrance and obstructions on the part of the plaintiff way to reach his properties and to carry the agricultural products into the schedule properties to perform the agricultural operations.

13. Further, the said inculcation and perpetration as alleged by the applicant/plaintiff herein has been countered and opposed by the defendant No.1 to 4 who preferred their objections in the form of statement. Wherein according to the defendants, the 1st defendant has no connectivity or adjacent property of the plaintiff and the property of the plaintiff is no way abutted and adjacent to the property of the defendant No.1. Accordingly, as per the objections and also inculcation of the defendant No.1, her any

corner of the property has not been faced towards the property of the plaintiff. However, the pathway or cartway which is alleged to be claimed by the plaintiff is not in existence and it is fictitious and imaginary one and created only for the purpose of registering the suit.

14. Further upon verifying and also appreciating the rival and contrary pleadings of the parties in the pleadings of the plaint and the statement, an easement of necessity as claimed and sought by the plaintiff herein is a legal right to use and access the property of the other for the specific purpose. Further, the Hon'ble Supreme Court of India has clarified that, an easement of necessity is available only when there is no other way to access the property of the party. Therefore, as per the very contention of the plaintiff/applicant herein, except through the properties of these defendants, he has no other alternative pathway, wynd so to use and access to reach the schedule properties.

15. Admittedly, the defendant No.1 has specifically submitted in her statement that, none of the portion of the property of the defendant No.1 is facing towards the property of the plaintiff and she is not adjacent owner of the property of the plaintiff herein. However, despite the summons were being issued and which were duly served and reached on the defendants No.5 and 6, they remained absent and they could not turn up before this court either personally or through any representative so to contest the suit. Further, notably as per the very version and contention of the applicant/plaintiff herein, he is accessing and using the

pathway in the northern region and portion of the plaintiffs property, where the property of the defendant No.5 and 6 is in existence so to reach through and accessing the property of the defendant No.5 and 6.

16. The said contention is remained untouched and not declined or challenged by the defendant No.5 and 6 who were remained silent, even after the process of service of suit upon them. Therefore, at this juncture while adjudicating an application regarding the easement right, the existence of the pathway or cart track as alleged by the plaintiff is to be proved by the very plaintiff leading cogent and substantial piece of evidence. However since the very plaintiff himself stated that, towards the northern side of the property of the plaintiff, there comes and exists the property of the defendant No.5 and 6 through which the plaintiff is able to reach the destiny of the schedule property. Therefore, the plaintiff may be permitted and allowed to access the said land belongs to the defendant No.5 and 6 so to access through the said property so as to carry out the agricultural activities without damaging and destroying the property of the defendant No.5 and 6 who are not appeared before this court.

17. However, in respect of the assertions as propagated and possessed in the applications that towards the eastern region of the application schedule properties, there comes and exist the property of the 1st defendant is concern, since it has been seriously disputed and declined by the defendants in their statements, it is up to the very plaintiff to establish the said

existence of the road and his right of accessing on the said easement right on and over the property of the defendant No.1 during the full fledged trial that cannot be adjudicated or dealt, determined and decided during the course of and while deciding the applications.

18. Therefore, the applicant/plaintiff may be permitted to access the property of the defendant No.5 and 6 without damaging or detoriate the property or any crops belongs to the defendant No.5 and 6. However, there is no materials are placed before this court, as of now to proceed and to obtain an easement right of way in the property of the defendant No.1 and the plaintiff certainly at liberty to place all sort of reliance, evidence and documents, during his evidence in the subsequent proceedings of the suit and that can be decided during pending disposal of the suit. Therefore, the points are answered **point No.1 to 3 Partly in the Affirmative.**

19. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

Applications No.1 and 3 filed by the applicant/plaintiff U/o 39 R-1 and 2 R/w Sec. 151 of C.P.C. are hereby partly allowed.

Consequently, the defendant No.5 and 6 or any other persons acting and

claiming on their behalf are hereby abstained and restrained by way of temporary injunction order from causing any hindrance, interference in respect of the plaintiff movement and accessing their property for the purpose of ingress and egress into the property of the defendant No.5 and 6 to reach his schedule property and in carrying out their agricultural activities.

Further it is clarified that, this order shall be in force and continued till the disposal of the suit or till the defendants No.5 and 6 appear before this court which ever is earlier.

However it is made clear that, the view expressed by this court in adjudicating the applications is only limited for the purpose of consideration of the applications and it will not come in the way of adjudicating the suit on merit.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 01st day of March 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.