

KAMS600012222023



M.A./22/2023

IN THE COURT OF THE SENIOR CIVIL JUDGE
AT PERIYAPATNA

Present
Sri.RAJU.M.,
M.A., LL.B.,
Senior Civil Judge,
Periyapatna.

Dated: 7th Day of March 2026

MA.No.22 of 2023

Appellants:

- 1.** Sri.Rajegowda s/o Late Thammegowda,
Age: 60 years, Occ: Agriculture.
 - 2.** Sri.T.T.Jagadeesha s/o Late Thammegowda,
Age: 54 years, Occ: Agriculture.
 - 3.** Sri.Ramesha s/o Late Thammegowda,
Age: 48 years, Occ: Agriculture.
 - 4.** Sri.Suresha s/o Late Thammegowda,
Age: 45 years, Occ: Agriculture.
- All are r/o Telaginakuppe village,
Komalapura Post, Ravanduru Hobli,
Periyapatna Taluk.

(By Sri.IRS, Advocate)

Versus

Respondents:

- 1.** Sri.Yogesha s/o Sannegowda,

Age: 45 years, Occ: Money Lending Business,
r/o Mallinathapura Village, Kasaba Hobli,
Periyapatna Taluk.

2. Sri Ravi s/o Suresha,

Age: 45 years, Occ: Money Lending Business,
r/o Nilavadi Village, Bettadapura Hobli,
Periyapatna Taluk.

(By Sri.JSN, Advocate)

Date & nature of decree appealed against	Order on IA I in OS.No.189/23 dated 05.09.23 on the file of Civil Judge & JMFC, Periyapatna.		
Date of institution of appeal	20.09.2023		
Date of judgment	07.03.2026		
Duration of the appeal	Y/s 02	M/s 05	D/s 17

**Senior Civil Judge,
Periyapatna.**

J U D G M E N T

This miscellaneous appeal under Order 43 Rule 1 of CPC is filed by the appellants/plaintiffs against the order dated 05.09.23 passed by the Civil Judge & JMFC, Periyapatna, on IA.No.1 in OS.No.189/23

dismissing the IA.No.1 filed under Order 39 Rule 1 and 2 of CPC, by the appellants/plaintiffs.

2. The appellants are the plaintiffs and the defendants are the respondents before the trial court.

3. The plaintiffs, in the plaint have pleaded that the suit schedule property is the ancestral property and plaintiff no.1 is the absolute owner in possession and enjoyment of the suit schedule property (by fencing the same) which has been fell to his share through a Registered Palu Parikathu dated 11.02.1997. When such being the case, on 19.06.2023 the defendants tried to interfere with the possession of the plaintiffs over the suit schedule property and broke the barbed fence and stone and also destroyed the Tobbacco Crop. Further, the defendants with the help of the JCB, tried to form the road from East to Western side of the suit

schedule property. The defendant No.1 for about 2 years ago purchased the land bearing Sy.No.28 and instead of using the public road, he tried to form a road in the plaint schedule property. The defendants have no manner right and title over the suit schedule property but not stopped their interference over the suit schedule property. The plaintiffs also tried to give a complaint before the jurisdictional police but the police directed the plaintiffs to approach the jurisdictional court for necessary remedies.

4. After service of summons, the defendants appeared before the Court and filed the written statement denying the plaint averments and contended that the defendant No.1 on 25.03.2021 purchased the land bearing Sy.No.28 measuring 2As, situated at Haralahalli village, Ravanduru Hobli. Periyapatna Taluk from one Chandregowda. Further on 29.06.2021,

the defendant No.1 purchased the land bearing Sy.No.29 measuring 0-27Gs situated at Haralahalli village, Ravanduru Hobli. Periyapatna Taluk from one Ramegowda for a sale consideration. Accordingly, the khatha of the aforesaid properties was transferred in the name of the defendant no.1. The plaintiffs in order to trouble the defendants intentionally ploughing on the road situated towards the southern side of the suit schedule property. Infact, the said road is in existence since 60-70 years. However, the plaintiff by ploughing on the aforesaid road filed the above suit and obtained ex-parte order and fenced the suit schedule property by barbed wire and closed the aforesaid road.

5. It is further contended that the defendants were using the said road to reach out their property. However, the plaintiffs are interfering with the usage of the said road. Hence, the defendants are facing

problems to carryout the agriculture activities in their property. The defendants are having easementary rights over the aforesaid road. The Thasildar also reported that, except the road situated towards southern side of the Sy.No.11, there is no alternative road. Further on 19.09.2022, the land surveyor surveyed the suit schedule property and recorded the statement and obtained the signature of the plaintiffs and observed that, there is a road in the suit schedule property. Further, land to an extent of 21Gs of the suit schedule property was covered by the lake. Hence, prayed to dismiss the application with exemplary cost.

6. Along with plaint the appellants/plaintiffs filed the application i.e., I.A.No.1 under Order 39 Rule 1 and 2 of CPC with duly sworn affidavit seeking to restrain the respondents/defendants from interfering with the

appellants/plaintiffs peaceful possession and enjoyment over the suit schedule property by granting an ex parte order of temporary injunction till disposal of suit (IA-1) stating facts set out in the plaint, which are already stated *supra* and there is no need of repetition and the defendants filed a memo stating to consider the written statement averments as of objections to I.A.No.I.

7. Trial Court has raised following points;

- 1. Whether the plaintiffs have made out prima facie case in their favour ?*
- 2. Whether the balance of convenience exists in favour of plaintiffs?*
- 3. Whether irreparable loss or injury will be caused to the plaintiffs if temporary injunction is not granted at this stage?*
- 4. What order?*

8. After hearing the arguments and perusing the written arguments filed by the plaintiffs and materials available on record, the trial Court has dismissed the application of the appellants/plaintiffs. Being aggrieved by the said order the appellants/plaintiffs preferred this appeal by reiterating the plaint averments. It is further stated that the Trial Court has erred in passing the impugned one sided order. Trial Court has not gone through the documents produced by the appellants/plaintiffs. There is no existence of usable road in the suit schedule property and also there are no documents supporting the existence of the road in the said property. It is mentioned in the suit filed before the trial court that there is no mentioning of existence of road in the checkbandi of concerned sale deed in respect of the properties purchased by the defendants in Sy.No.28 and Sy.No.29 during the year 2021. The

defendants who are in the real estate business having been colluded with the survey officials have created a concocted and false sketch and submitted their report along with sketch on 19.09.2022 in order to knock off the suit schedule property. The respondents/defendants in order to declare their rights over the road which is said to have been in deemed existence would have filed a suit under Section 40 of Easementary Rights. Appellants/Plaintiffs have made out a prima facie case and also balance of convenience not lies in their favour. Among these grounds the appellants/plaintiffs prayed to allow the appeal and set aside the impugned order.

9. After service of notice the respondents entered appearance through their advocate. Heard arguments on both side.

10. Following points arise for consideration;

P O I N T S

1. Whether the findings of Trial Court that the plaintiff have not made out a prima facie case, balance of convenience not lies in their favour and great hardship will not be caused to them are sustainable under law and on facts?

2. What order?

11. Answer to the above points is as follows;

Point-1: Partly in the affirmative.

***Point-2: As per final order
for the following:***

R E A S O N S

12. **Point-1:** It is the case of the appellants/plaintiffs that the plaintiff/appellant No.1 has acquired the suit schedule property through the registered partition. After that he got changed the khatha of the suit schedule property and he is in possession of the same without interruption from anybody. The appellants/plaintiffs, in support of their case have produced certified copy of registered partition deed dated: 11.02.1997 through which the appellants have

got divided their family properties and suit schedule property fallen to the share of the appellant/plaintiff No.1. As per the RTCs produced by the appellants they are having 1A 38Gs of land each in Sy.No.11 of K.Haralahalli Village, Periyapatna Taluk but in the plaint schedule only 1A 38Gs is mentioned which was fallen to the share of the appellant No.1. This aspect is not in dispute. The appellants have produced 4 tax paid receipts, certified copy of survey tippani of Haralahalli village in respect of Sy.No.10 and 11, Karnataka Revision Settlement Akar Bandh, photographs in respect of suit schedule properties, RTC of the land bearing Sy.No.28 which is standing in the name of respondent/defendant No.1.

13. As per the written statement averments the respondent No.1/defendant No.1 has purchased the land in Sy.No.28 and 29 which are situated on the

southern side of the suit schedule property through the registered sale deed dated: 29.06.2021. The vendors of the defendants were using the road which runs through the plaint schedule property. After purchase the respondents were also using the same road. The respondents and other owners of the land are using the road which runs in the suit schedule property from the last 60-70 years by way of easementary rights. Except the road in the suit schedule land there is no other road to ingress and egress to the land of the respondents/defendants and others.

14. The defendants/respondents, in the written statement further contended that the survey authority have conducted spot inspection and prepared sketch and also reported that except the road which runs on the southern side of the suit schedule road there is no other road. The defendants/respondents in support o

their case have produced application given to conduct the survey, copy of notice issued by the revenue authority to conduct the survey in the land bearing Sy.No.11, statement recorded by the surveyor from the plaintiff and respondent, survey sketch, endorsement issued by the Assistant Commissioner, ESRI topo sketch, google map photos.

15. According to the appellants/plaintiffs there is no road in the suit schedule property. In spite of that the respondents/defendants are claiming the existence of road in the suit schedule property. The respondent except challenging the existence of the alleged road in the suit schedule property they admitted the possession of the appellants in the suit schedule property. Likewise, the appellants/plaintiffs are also not claiming rights in respect of the property belonging to the respondents/defendants. Therefore, it is

considered that the suit schedule property belonging to the appellant No.1.

16. The trial court in its order has observed that survey sketch and report produced by the appellants/plaintiffs shows that there is a road in Sy.No.11 to an extent of 35Gs. Plaintiff No.1 has also affixed his signature in the statement recorded by the surveyor. The trial court has also observed that when the appellants/plaintiffs are seeking injunction they have to establish their possession over the entire suit schedule property which is the main reason to dismiss IA.No.1 filed by the appellants/plaintiffs before the trial court.

17. Now, it is to be appreciated that whether the appellants proved prima facie case that they are in possession of the entire suit schedule property and is

there any road in the suit schedule property which has been used by the defendants/respondents and others.

18. It is an undisputed fact that the suit schedule property belonging to the appellant No.1. The real dispute is in respect of existence of road in the plaint schedule property. As per survey sketch and report it is mentioned that there is a road which runs through the suit schedule property but the road is not found in the survey records. In the survey report it is also mentioned that the appellants and respondents are in possession of lesser extent than the extent of land shown in their respective RTCs. Further as per survey report there is tank in extent of 21Gs in Sy.No11 . There is totally 7As 32 Gs of land in Sy.No11. The surveyor did not mention whether the area in which water is collected comes into the land of appellant No.1

or in the portion of their brother. Naturally, water flows towards ditch. If some water is collected in the private land it can't be treated as tank unless the government reserve the land for that purpose. Without any public document it is not possible to treat a private land as a tank. If some water is collected in any private land the concerned land owner will not lose his right over such land. It appears that surveyor without understanding the proper meaning of tank he wrote the same in his report. For that reason it can't be treated that owners of land in Sy.No.11 are in possession of lesser extent.

19. The respondents claimed easmentary rights over the alleged road in the suit land but they do not specifically mentioned whether they claim easement of necessity, easement of prescription or customary easement. However, I intend to refer section 4 of the Indian Easments Act which says that "Easement"

defined.—An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. Dominant and servient heritages.

The village map is a public document which is meant for public purpose. In this regard, I intend to refer Section 83 of Indian Evidence Act which reads thus;---

“presumptions as to maps and plans, stating courts must presume maps/plans made by Central or State Government authority are accurate, but those created for a specific case need proof of accuracy. It distinguishes between official government surveys (presumed correct) and private/case-specific maps (must be proven accurate), placing the onus on the party presenting the latter to demonstrate their reliability in court, often through expert testimony or

other evidence”.

20. As per the village map produced by the appellant there is no road in the suit survey numbered land but a path way runs on the southern side and eastern side of the survey number 11 which is adjacent to the suit land.

21. As per the above provision it is to be presumed that except pathway on the eastern and southern side of the land bearing Sy.No.11 there is no road within the said survey number. Mere existence of pathway for some period is not a ground to say that the appellants/ plaintiffs have lost their possessory rights in respect of the suit schedule property or the respondent got easementary right. When there is an alternate pathway which is meant for public use, the defendants/respondents cannot claim easementary

rights over the suit schedule property. In this regard I intend to refer the judgment of the Hon'ble Supreme Court in **civil appeal No. 9643/2010** in the case of **Manisha Mahendra Gala V/s Shalini Bhagawan Avathramani** wherein it is held that;

'The easementary right by necessity could be acquired only in accordance with Section 13 of the Act which provides that such easementary right would arise if it is necessary for enjoying the Dominant Heritage. In the instant case, findings have been returned not only by the appellate courts but even by the trial court that there is an alternative way to access the Dominant Heritage, which may be a little far away or longer which demolishes the easement of necessity. There is no justification to go into those findings of fact returned by the courts below.'

22. On perusal of the pleadings and documents of both the parties it is proved that the appellant No.1/plaintiff No.1 is in possession and enjoyment of the plaint schedule property. Thereby plaintiff is able to prove prima-facie case in his favour, for that reason balance of convenience is also in favour of the appellants/plaintiffs. But this aspect is not considered by the trial court. Hence, the findings of the trial court on point No.1 & 2 is not correct .

23. According to the defendants /respondents they are using the path way in the suit land for agricultural work. While dealing with the application under Order 39 Rules 1 and 2 of CPC it is important to consider that if an order of temporary injunction is granted who will be put to irreparable loss and injury. If TI order is granted and on the strength of the order there may be chances of causing trouble by the appellant for

agricultural work of the respondents, then the respondents will be put to hardship and injury. Taking in to consideration of the facts and circumstances of the case if it is order to maintain status quo in respect of the suit property it would meet the justice to the parties. Therefore, IA.No.1 filed by the appellants/plaintiffs in the above said original suit deserves to be allowed in part. Hence, the above point is answered ***partly in the affirmative.***

24. Point-2: By virtue of above findings, Court proceeds to pass the following;

ORDER

Miscellaneous Appeal is allowed in part.

Accordingly, the Order dated: 05.09.2023, passed on IA.No.1 in OS.No.189/2023 on the file of the Civil Judge & JMFC, Periyapatna is hereby partly allowed and modified as under.

Consequently, appellants and respondents shall maintain status quo in respect of the suit schedule land till the disposal of the suit.

Send a copy of this order to the trial court.

(Dictated to the Stenographer and transcribed by her, corrected and initialed by me and then pronounced in the open Court on 07.03.26).

sd/-
(RAJU.M.)
Senior Civil Judge,
Periyapatna.