

KAMS710001302022



**IN THE COURT OF THE ADDL.CIVIL JUDGE &  
JMFC., AT T.NARASIPURA**

**: PRESENT :**

**Smt. Anitha Kumarie , B.Sc., LL.M.,  
ADDL. CIVIL JUDGE & JMFC,  
T.NARASIPURA**

**DATED THIS THE 6<sup>th</sup> DAY OF APRIL 2022**

**O.S./30/2022**

**Plaintiff** : Sri.Mohammed Nisvam

**(By Sri.B.D, Adv.,)**

**V/s**

**Defendants** : Sri.Nisar Ahmed & others

**(By Sri.M.D, Adv.,)**

**PARTIES ON IA.No.II**

**Applicant** : Sri.Mohammed Nisvam..... **Plaintiff**

**V/s**

**Opponents** : Sri. Nisar Ahmed & others .....

**Defendants**

### **ORDERS ON IA.No.II**

The I.A No.II filed by applicant/plaintiff under order 39 Rule 1 and 2 R/w section 151 of C.P.C praying to pass an order of ad-interim temporary injunction restraining the defendants, their heirs, agents, servants, family members or anybody acting under or on their behalf from interfering with the peaceful possession and enjoyment of the common road which is meant for public use in any manner whatsoever, pending disposal of the suit.

2. The suit summons served on the defendants through RPAD, they have appeared before the Court through their counsel and filed objections to the I.A No.II and prayed to dismiss the same with cost.

3. Heard the learned counsels for the Plaintiff and defendants and perused the materials placed on record.

4. Now, the Points that would arise for the consideration of this court on I.A No.II are as under:-

*1. Whether the Plaintiff proves that, the prima facie case in his favour ?*

*2. Whether the balance of convenience lies in his favour ?*

3. *Whether the Plaintiff proves that, he would be subject to loss and hardship in the event of not allowing the I.A No.II ?*

4. *What Order ?*

5. The findings of this court on the above points are as under:

Point No.1 : **Partly Affirmative**

Point No.2 : **Partly Affirmative**

Point No.3 : In the **Affirmative**

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

### **REASONS**

6. **Point No.1 to 3**: As these points are taken up together for consideration in order to avoid the repetition of facts.

7. The plaintiff submit on oath in the affidavits annexed to the present applications that, the suit filed by the Plaintiff against the defendants for the relief of permanent injunction. The suit schedule property originally belongs to one Makbool Ahamed and it is his ancestral property. Later the said Makbool Ahamed along with his family members have sold the suit schedule property in favour of the plaintiff on 25.09.2017 through registered sale deed handed over the possession of the suit schedule property. The

Khatha and other revenue records have been changed into his name and he is in possession and enjoyment of the same.

8. Further stated that, the suit schedule property was a old house, by demolishing the same he has constructed a new residential building. Towards the east there is a common road in order to reach the house of the plaintiff and defendants and his godown, which is in the back side of the house. As he was scrap dealer, he retained the old house behind his house in order to store the scrap materials and thereby using the said road in order to store the scrap materials. The defendants being the neighborers are obstructing him in using the said road stating that, the said road belongs to them. That he knows the said road is meant for the use of public since from 1965. At that point of time the defendants threatened him with dire consequences. Hence, he approached jurisdictional police, but they have directed to approach the court of law as the matter involved is civil in nature. Hence prayed to allow the application.

9. Per contra, the counsel for the defendants has filed objection to the said interim application and denied the entire application averments and stated that, the application is not maintainable either in law or on facts deserves to be dismissed. Further stated that, the

defendants are own brothers being the sons of late Abdul Hafeez. They own and possess house properties and vacant sites on the southern side of the plaint schedule property. In addition, on the eastern side of the plaint schedule property elder brother of defendants father by name Abdul Kuddus owns and possess vacant site bearing Janjor No.47, property No.42, thereafter towards southern side vacant site and house property of Abdul Reheman S/o Abdul Gayab Sab are situated. Since the said Abdul Reheman is no more, his son Mohammed Hussain and his family members are in possession and enjoyment of the vacant site, house property in Janjor No.43 and property No.39. Thereafter, the residential house property of Haqpasha who is the 2<sup>nd</sup> defendant is situated. On the extreme southern side the vacant site of Muqthar Ahmed S/o Abdul Hafeez is situated. On the western side of the residential house of the 2<sup>nd</sup> defendant, the RCC residential house and Mangalore tiled house of the 3<sup>rd</sup> defendant are situated. Thereafter towards northern side of RCC and Mangalore titled houses of 3<sup>rd</sup> defendant, the vacant site of the 1<sup>st</sup> defendant Nissar Ahmed is situated. In this manner the defendants being the relatives from common ancestors are in possession and enjoyment of the houses and vacant sites.

10. Further stated that, in between the houses and vacant sites of the defendants from northern side road the vacant site of the Abdul Kuddus who is the senior uncle of the defendants is situated the 2<sup>nd</sup> defendant Haqqasha has constructed the house. Similarly, the wife of 3<sup>rd</sup> defendant namely Jainabi has also constructed RCC house. On the eastern side of the plaint schedule property from the northern side village road, the properties of the families of the defendants are situated. All these material facts have been suppressed by the plaintiff with oblique intentions to harass the defendants as much as possible.

11. Further stated that, in order to reach the houses and vacant sites of the defendants and their relatives they have left 9 feet passage in their property for their exclusive egress and ingress from northern side village road to their respective houses and vacant sites. Hence, the eastern boundary furnished by the plaintiff as road in the plaint schedule is absolutely false. The passage exist on the eastern side of the plaint schedule property is formed by the plaintiff in their property to reach their respective houses and vacant sites. Hence the plaintiff cannot claim right of way falsely saying that the said passage is a common road. There is no godown on the back side of the plaint schedule property for storing scrap materials as stated in the plaint.

12. Further stated that, the plaintiff has constructed the plaint schedule house property without leaving any setback nor obtained any license and plan from the jurisdictional Doddebagilu grama panchayath while constructing the said plaint schedule house. There is a village road in front of his plaint schedule house on the northern side and also he has got entrance from the passage situated on the western side of the house of his grandfather Mohammed Ali to the back side dilapidated house of the plaintiff. The said back side house of the plaintiff is already collapsed and it cannot be used for any purpose much less for storing scrap materials. The plaintiff illegally started parking the goods auto in the said narrow 9 feet passage and started obstructing the defendants movements. The said illegal act was questioned by the defendants by lodging a complaint before the jurisdictional Talakadu police against the plaintiff and his family members.

13. Further stated that, the concerned police enquired the matter along with PDO of Doddebagilu grama panchayath visiting the spot. At that time the PDO of Doddebagilu grama Panchayath has clearly explained that the passage is the part and parcel of defendants property and it is not a public road or common road. On which the plaintiff absolutely has no right of way. In spite of it the plaintiff has foisted the

above false and frivolous suit on false set of facts and allegations to harass the defendants as much as possible. Hence, the very suit of the plaintiff including the application under objection is not maintainable either in law or on facts of the case. Therefore, prays to reject the application with costs.

14. As could be seen from the contention of the application it is contended that , towards eastern side of the suit schedule property there is a common road situated, which is utilized by the plaintiff to carry the scrap materials to store the same in the back portion of the suit schedule property, which is used as godown. For which the defendants are obstructing by saying that, the said road exclusively belongs to them, meant only for the utilization to reach their houses and site properties. So, the present application is filed.

15. In order to substantiate the contention of the plaintiff has furnished the copy of sale deed dated:25.09.2017, wherein it is mentioned towards eastern and northern side showing as road in the sale deed pertaining to the suit schedule property. But the plaintiff has shown in the plaint his house property as suit schedule property, wherein the disputed property is being road, which also shows towards eastern side of the suit schedule property there is road. There is another document support the sale deed i.e., Form

No.11B the E-Khatha, wherein in the said document also towards eastern side road is shown.

16. The defendants say that, the said road is exclusively belongs to them, which has been left by them to reach their houses and site properties. But there is no supporting documents to show that, the said road is formed in their properties. They have furnished some demand register extracts and tax paid receipts, wherein there is no entry of the boundary of their properties. Their contention is that, the house of Abdul Salman and vacant site of Abdul Kuddus, site of Abdul Rehaman towards their western side they left 9 feet narrow as passage to reach the properties, but neither sale deed nor any other documents, which establish that towards the western side of their properties there is a passage left by them is not forth coming. It is the contention of the defend that the Thahaildar has reported that the said passage is part and parcel of the defendant property while spot inspection, but on what basis he has come to such conclusion is under consideration.

17. The defendants contended that, the plaintiff has left a portion of dilapidated house behind the suit schedule properties, which is not fit for nay purpose, falsely claiming way for storage of the scrap materials in the said godown, at another stand the plaintiff say that,

they wanted to take away the paddy and ragi bags stored in the said godown, whether the purpose of the usage of the alleged road will be decided after full fledged trial. Now the dispute is with regard to whether towards the eastern side o the suit schedule property there exist public road or not is the point to be considered. So, at this juncture the documents furnished by the plaintiff prima facie show that there is road towards the eastern side of the suit schedule property. Whether the said road belongs defendants or it is a public road is needs trial. At this juncture the defendants have not made their case. Hence, neither in the sale deed nor in the E-Khatha furnished by the plaintiff it is mentioned as road belongs to defendants towards eastern side. Therefore, the plaintiff has made out prima facie case and balance of convenience is in favour of the plaintiff and if the plaintiff is not allow to use the the said road he will be put to irreparable loss and injustice. Hence, this court answered the point No.1 and 2 are in the **partly Affirmative** and point No.3 is in the **Affirmative**.

18. **POINT NO.4** : In view of my above discussion this court proceed to pass the following:

### **ORDER**

I.A.No.II filed by the plaintiff under order

39 Rule 1 & 2 R/w section 151 of C.P.C is hereby **partly allowed**.

The plaintiff and defendants are hereby directed to make use of the said road towards eastern side of the suit schedule property peacefully, not restraining each other till disposal of the suit.

*[Dictated to the Stenographer on computer, typed by her, revised and corrected by me and then pronounced in the open court on 06.04.2022].*

**Addl Civil Judge & JMFC.,  
T.Narasipura**

**(Orders pronounced in open court vide  
separate order)**

**O R D E R**

I.A.No.II filed by the plaintiff under order 39 Rule 1 & 2 R/w section 151 of C.P.C is hereby **partly allowed**.

The plaintiff and defendants are hereby directed to make use of the said road towards eastern side of the suit schedule property peacefully, not restraining each other till disposal of the suit.

Call on:13/6/2022.

**Addl Civil Judge & JMFC.,  
T.Narasipura \***