

KAMS710002022016



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND JMFC AT
T.NARASIPURA**

Dated this the 2nd day of June 2026

**Present: Smt.Niveditha N., B.A.L., LL.B, LL.M.,
I Additional Civil Judge & JMFC., T.Narasipura.**

O.S./36/2016

Plaintiff

: 1. S.Ningappa,
S/o Late Shambhaiah,
Aged about 64 years.

2. Smt.Shashikala,
W/o S.Ningappa,
Aged about 50 years.

Both are R/at Muttatti Village,
Thumbala Post, Kasaba Hobli,
T.Narasipura Taluk, Mysuru District.

(By Sri.K.S.S., Advocate)

V/s

Defendants

: 1. Siddegowda,
S/o Late M.S.Doreswamy,
Aged about 50 years.

2. Smt.Bhagyamma,
W/o Siddegowda,
Aged about 45 years.

3. Babu,
S/o Late M.S.Doreswamy,
Aged about 32 years.

All are R/at Muttatti Village, Thumbala
Post, Kasaba Hobli, T.Narasipura Taluk,
Mysuru District.

(By Sri.K.G.P., Advocate)

Nature of the Suit	: Mandatory Injunction & Permanent Injunction
Date of the commencement of recording of the evidence	: 18/02/2020
Date on which the judgment was pronounced	: 02/06/2026
Total duration	Years Months Days 10 03 23

JUDGMENT

1. **Relief:** The plaintiffs have filed the suit seeking for the reliefs of permanent injunction and mandatory injunction in respect of the suit schedule property.

2. **Schedule:**

The galli existed in between houses of plaintiffs and defendants measuring east to west 6 feet and north to south 70 feet bounded on East: House of plaintiffs, West: House of defendants, North: Channel Road, South: Road and the house property bearing number 21 measuring east to west 25 feet and north to south 70 feet situated at Muttatti Village, Thumbala Post, Kasaba Hobli, T.Narasipura Taluk, Mysuru District,

bounded on East by: House and site of Madegowda, West by: Galli, North by: Road and South by: Road.

3. The brief facts of the plaintiff's case is as follows:

a. The plaintiffs in the plaint have pleaded that the plaintiff No.2 is the wife of plaintiff No.1, the plaintiff No.1 is the absolute owner of suit schedule property bearing No.21 measuring ExW 25 feet and NxS 70 feet situated at Muttatti Village. The plaintiff No.1 got purchased the schedule property through registered sale deed dated 27/03/1987 from one Shivanna and his wife Mahadevamma @ Jayalakshmi for valuable consideration.

b. Further, the defendants house is situated towards western side of galli and suit schedule house property of plaintiffs. The schedule house property and adjacent eastern side house property of Lakshamma and Mahadevu and western side house property of defendants was originally belonging to the plaintiff No.2's parents by name Late Vydyagowda and Late Smt.Gowramma. The father of defendants M.S.Doreswamy got purchased the vacant site from their vendors towards western side of above said galli.

c. Further, the galli existing in between the house of plaintiff and defendants runs from south to north is measuring about 6 feet in width. The plaintiffs have constructed a cattle house towards northern side of their residential house in the year 2006. The roof of plaintiff's house projected towards western side galli and they are making use of the same

for their free movement and also for the movement of their bullocks and cattle from southern side road.

d. Further, the defendants got constructed their house over vacant site to the full extent towards eastern side and roof is not projected towards galli. The plaintiffs have making use of the said galli without any obstruction or interference from the date of purchase of suit schedule house property. The khatha of the suit schedule property also changed into the name of plaintiff No.1 in the office of Grama Panchayath and the plaintiffs are in peaceful possession and enjoyment of the schedule property by paying tax.

e. Further the defendants without any right started interference with the peaceful possession and enjoyment of the suit schedule property of the plaintiffs and recently in the month of January-2016 started creating obstruction by opened a water tap in the above said galli. The plaintiffs have questioned the illegal act of the defendants and on that day the defendants have agreed to remove the same. But the defendants instead of removal of obstruction, trying to put up illegal construction and started digging the foundation towards northern side of their house by encroaching the existing galli three days back. Immediately the plaintiff No.1 has intimated about illegal construction of defendants to the PDO of Thumbala Grama Panchayath. The PDO visited the spot and instructed the defendants not to put up any illegal construction over the existing galli. But, the defendants did not care the instruction given by the PDO of Grama Panchayath and trying to lay a foundation without obtaining any

licence from the concerned authority. The illegal act of the defendants amounts to diminishing the width of the existing gally.

f. Further, the police also refused to receive the complaint from the plaintiff No.1 against the defendants and advised the plaintiff No.1 to approach the civil court. The plaintiff No.1 is a retired government servant, he cannot resist the illegal activities of the defendants at his old age. The defendants are very strong persons in the village. Hence, this suit.

4. On service of summons, the defendants have appeared before the Court through their advocate. The defendant No.1 has filed the written statement.

a. In the written statement, the defendant No.1 has admitted the existence of gally at eastern side of their property and they have constructed water tap by obtaining licence in the year 2005 and by including gally, the father of defendants was purchased. Further, in between the property of plaintiffs and defendants, the gally is situated measuring 6x70 feet and it belongs to the defendants. The plaintiffs have no right over the said gally. Hence, there is no recitals about existence of 6x70 feet gally in the sale deed. On 11/06/1982 the suit schedule property was purchased by one Venkatesha and others through sale deed and in the said sale deed also there is no recitals about existence of gally. Further there is no recitals in D3 about existence of gally. The father of defendant No.1 has constructed the house in the property by leaving gally. Hence, the property measuring 6x70 feet gally belongs to the

defendants. The plaintiffs have no right over the said gally. Hence, prays to dismiss the suit with costs.

5. Based on the pleadings and the documents of the parties, my learned predecessor has framed the following:

ISSUES

1. Whether the plaintiffs proves that they are in peaceful possession and enjoyment of the suit schedule property as on the filing of this suit?
 2. Whether the plaintiffs prove that the alleged interference by the defendants?
 3. Whether the plaintiffs are entitled for the relief of mandatory injunction?
 4. Whether the plaintiffs are entitled for the suit claim?
 5. What order or decree?
6. Heard the argument of both counsels and perused the entire records.
7. My findings on the above issues are as follows:

Issue No.1 : **In the Affirmative**

Issue No.2 : **In the Affirmative**

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

Issue No.4 : **In the Affirmative**

Issue No.5 : As per the final order, the following;

REASONS

8. Issue No.1 and 2: In order to avoid repetition of facts, these issues are taken up together for discussion.

9. The plaintiffs have filed the suit seeking for the reliefs of permanent injunction and mandatory injunction in respect of the suit schedule property. The defendants have filed the written statement by denying the claim of the plaintiffs.

10. In order to substantiate claim of the plaintiffs, the plaintiff No.1 has filed the chief examination affidavit by reiterating the plaint averments and examined as P.W.1 and produced Ex.P1 to 30. Ex.P1 is the certified copy of the sale deed dated 27/03/1987 executed by S.Venkatesha and his wife in favour of S.Ningappa who is plaintiff NO.1 herein for the property measuring ExW 25 feet, NxS 70 feet situated at Muttatti Village. Ex.P2 is the demand register stands in the name of the plaintiff No.1. Ex.P3 to 9 are the tax paid receipts. Ex.P10 is the rough sketch. Ex.P11 to 27 are the photos. Ex.P28 is the CD. Ex.P29 and 30 are the acknowledgments issued by T.Narasipura Police.

11. In order to support their claim, the plaintiffs have got examined witness by name Kenchaiah S/o Late Chikkaboraiah as P.W.2. The P.W.2 failed to appear before the Court for cross examination. Hence, cross of P.W.2 was taken as nil.

12. Per contra, to prove the defence taken in the written statement, the defendant No.1 has filed the chief examination affidavit by reiterating the written statement contention and examined as D.W.1 and produced

Ex.D1 to 6. Ex.D1 is the certified copy of the sale deed dated 11/06/1982 executed by Gowramma and her children in favour of Venkatesha in respect of property bearing Sy.No.125 measuring 26 guntas and house property. Ex.D2 is the certified copy of the sale deed dated 27/03/1987 executed by S.Venkatesha and his wife in favour of S.Ningappa. Ex.D3 is the original sale deed dated 12/09/1983 executed by Mahadevu in favour of Doreswamy in respect of vacant site bearing No.3 measuring 35x35 feet situated at Muttatti Village. Ex.D4 is the original sale deed dated 17/05/1965 executed by Gowramma in favour of Doreswamy for vacant site measuring 28x25 meters. Ex.D5 is the tax paid receipts. Ex.D6 is the rough sketch. D.W.1 was subjected for cross examination.

13. The counsel for the plaintiffs while arguing has submitted that there is no dispute in respect of property of the plaintiffs and the defendants and there is no dispute about existence of gally. In the written statement, the defendants have contended that including the gally, the defendants have purchased the properties. But they have not produced documents to show that the said gally was purchased by them as per Ex.D1. The plaintiff No.1 has purchased the house property. Ex.P10 and D6 are the rough sketch admitted by the defendants and in the rough sketch, they have admitted the existence of gally. During the pendency of the case, the defendants have constructed wall in the said gally. As per Ex.D4 after purchase, the father of the defendants has constructed the house about 50 years ago and there is no abstraction from the father of the defendants for 50 years. But the defendants are causing obstruction to

make use of said gally by constructing water tap. Hence he prays to decree the suit.

14. The counsel for the defendants has argued that the plaintiffs have not produced documents about the suit schedule property. As per Ex.D3, the father of the defendants has purchased the property from Venkatesha who is the vendor of the plaintiff No.1 and in Ex.D3 there is no recitals about existence of gally. In Ex.D1 the house property of defendant is mentioned but there is no mention of gally. However, in Ex.D2 there is recital about gally for the first time. The plaintiffs have not produced title documents for northern side of their property. As per Ex.D4 northern side property was purchased by the defendants from the vendor of the plaintiffs. The plaintiffs have not produced documents to show the construction at northern side of their property. In the cross of P.W.1 he admitted the house of the defendants and there is no measurement of gally in the schedule. No licence was produced by the plaintiffs for construction of house and even in the cross of P.W.1, he admitted that he is not aware of existence of gally and there is no door at western side of the property of the plaintiffs. The plaintiffs have not produced documents of complaint and application filed before PDO. The defendants have produced Ex.D5 to show that by obtaining license water tap was constructed on 15/05/2005 itself. P.W.2 was not tender for cross examination and there is no conservancy road in the title document produced by the plaintiffs. Therefore, to cause trouble to the defendants, the plaintiffs have filed the present suit and prays to dismiss the suit.

15. Upon careful perusal and reading of the plaint, written statement, oral and documentary evidence of both the parties, it appears that the main claim of the plaintiffs is that they have purchased the suit schedule property measuring 21x70 feet and towards western side of the said property, gally is existing and the said gally is existing since 50 years and it is using by both parties but the defendants by encroaching the said gally, have put water tap and stair case in order to cause trouble to the plaintiffs. In this regard, the plaintiffs have lodged complaint against the defendants.

16. On the other hand, the defendants have denied the entire claim of the plaintiffs and have admitted the existence of gally and have contended that the defendants have purchased the property by including the said gally and other properties. Therefore, they are the absolute owners in possession of the said gally and the plaintiffs have no right over the said gally.

17. On perusal of the documents produced by the parties it discloses that as per Ex.P1, the plaintiff No.1 has purchased the suit schedule property measuring 25x70 feet on 27/03/1987 situated at Muttatti Village and in the said sale deed it is mentioned as “ಪೂರ್ವಕ್ಕೆ ದಕ್ಷಿಣಕ್ಕೆ ರಸ್ತೆ ಪಶ್ಚಿಮಕ್ಕೆ ಉತ್ತರಕ್ಕೆ ಗಲ್ಲಿ ಈ ಮಧ್ಯೆ ಇರುವುದು ನಾಡುಹೆಂಚಿನ ಹನ್ನೆರಡು ಕಂಬದ ತೊಟ್ಟಿಮನೆ ಇದಕ್ಕೆ ಅಂಕಣ 21 ಉಳ್ಳಿದ್ದರಲ್ಲಿ ಪೂರ್ವಕ್ಕೆ ಮಹದೇವು ಅರ್ಧ ಹಿಸೆ ಜಾಗ ಪಶ್ಚಿಮ ಪಾರ್ಶ್ವಕ್ಕೆ ನಿಮಗೆ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟಿರುವುದು ಪೂರ್ವಪಶ್ಚಿಮ ಇಪ್ಪತ್ತೈದು ಅಡಿ ದಕ್ಷಿಣೋತ್ತರ ಎಪ್ಪತ್ತು ಅಡಿ (25x70) ಉಳ್ಳ ನಾಡುಹೆಂಚಿನ ಮನೆ ಇದಕ್ಕೆ ಸೇರಿದ ಅಂಗಳ ಮೇಲ್ಜಾವಣಿ ಭೂಪ್ರದೇಶ ತಿರುಗಡುವ ಬೀದಿಬಾಗಿಲಿನ ಹಕ್ಕು ಕೊಟ್ಟ ಹಕ್ಕು ಬಚ್ಚಲಿನ ಹಕ್ಕು ವಸಾರೆ ಸಹ ಉಳ್ಳ ನಾಡುಹೆಂಚಿನ ಮನೆಯನ್ನು”.

18. In the above document it is clearly mentioned as northern side there is gally. As per Ex.P2 after purchase of suit schedule property khatha was transferred in the name of the plaintiff No.1 and as per Ex.P3 to 9, the plaintiff No.1 is paying tax to the concerned authority. Ex.P11 to 27 discloses the existence of gally and also existence of water tap and construction of wall by the defendants over the said gally.

19. To prove that by including the said gally, the defendants have purchased the property, the defendants have not produced the documents. As per Ex.D1 to 4, the father of the defendants by name Doreswamy has purchased the vacant site and western side Mangalore tiled house from ancestors of the plaintiffs and there is no dispute in respect of house property and site property of the plaintiff and the defendants. The dispute is only about rights over the gally. As per Ex.D4 it is clearly mentioned about existence of gally but there is no recital in Ex.D1 to 4 that by including the said gally the father of the defendants by name Doreswamy was purchased the property.

20. In the cross of P.W.1, though he stated that he is not aware of existence of gally but through amendment counsel for plaintiffs added measurement of gally in the schedule. In the cross of D.W.1 he specifically admitted the boundary of the suit schedule property and also existence of gally measuring 7½ feet. Further admitted that in Ex.D4 eastern side gally is mentioned. Even he admitted Ex.P16 photo and he further admitted the construction of water tap over the gally and he confronted Ex.P17 photo. He also admitted the construction of wall over the said gally. But rough sketch produced by the defendants at Ex.D6 the

said construction was not shown and it further reveals that after filing of the suit wall was constructed by the defendants over the gally.

21. As discussed above, the plaintiffs are not making claim over the gally by stating that they are the owners of the said gally. But the defendants are making absolute claim over the said gally by stating that the said gally is belonging to them. However, the defendants have not produced the documents to show that by including the said gally, they have purchased the property. The gally is public space and same can be used by adjacent owner and adjacent owners cannot make claim over the gally since the said gally is not belonging to them. As per the admission of D.W.1 and photos, it shows that the defendants have constructed water tap and wall over gally and it caused obstruction to the plaintiffs. The gally means street or lane or pathway and parties cannot make absolute claim over the said gally. The said gally is existing for common use of the plaintiffs and the defendants. Though, the defendants have produced licence at Ex.P5 but the PDO cannot issue licence for construction of water tap over the gally. Therefore, it is proved and established that there is no dispute about house property of the plaintiffs and the defendants and the plaintiffs are in possession of house property as mentioned in the schedule. Further it is proved existence of gally in between the house of plaintiffs and the defendants but the defendants by encroaching the said gally, have put up water tap and wall and it caused obstruction to the plaintiffs and to the public. The said gally is common use for both parties and parties cannot claim absolute right over the said gally. **Hence, Issue No.1 and 2 are answered Affirmatively.**

22. Issue No.3 and 4: In view of the above discussion, the plaintiffs have proved that the plaintiffs are in possession and enjoyment of the property measuring 25x70 feet and also existence of gally and further proved that the defendants by constructing water tap and stair case over the gally, caused distraction or obstruction to the plaintiffs and hence it is necessary to remove the same. **Hence, Issue No.3 and 4 are answered Affirmatively.**

23. Issue No.5: In view of the above answer and reasons on aforesaid issues, this Court proceeds to pass the following:

ORDER

The suit of the plaintiffs is decreed with costs.

Hereby ordered and decreed that, the defendants, their agents, servants or any other persons acting under them are hereby restrained permanently from putting up any illegal construction by encroaching the Galli and further restrained them from interfering with the peaceful possession and enjoyment of the suit schedule property of the plaintiffs.

Further, ordered and directed the defendants to remove water tap and stair case which was constructed over the Galli within 3 months from the date of this order.

Draw decree accordingly.

[Dictated to the Stenographer, transcript typed by her corrected, initialed and pronounced by me in the open Court on this the 2nd day of June 2026)

**I Addl., Civil Judge and JMFC.,
T.Narasipura.**

ANNEXURE

List of witnesses examined on behalf of plaintiff:

PW 1 : S.Ningappa
PW 2 : Kenchaiiah

List of documents exhibits on behalf of plaintiff:

Ex.P 1 : Certified copy of sale deed
Ex.P 2 : Certified copy of demand register
Ex.P 3 to 9 : Tax paid receipts
Ex.P 10 : Rough sketch
Ex.P 11 to 27 : Photos
Ex.P 28 : CD
Ex.P 29 & 30 : Acknowledgments issued by T.Narasipura
Police

List of witnesses examined on behalf of Defendants:

DW 1 : Siddegowda.M.D

List of documents exhibited on behalf of Defendants:

Ex.D 1 : Certified copy of sale deed dated 11/06/1982
Ex.D 2 : Certified copy of sale deed dated 27/03/1987
Ex.D 3 : Sale deed dated 12/09/1983
Ex.D 4 : Sale deed dated 17/05/1965
Ex.D 5 : Kandyam receipts
Ex.D 6 : Rough sketch

I Addl., Civil Judge and JMFC.,
T.Narasipura.

(Judgment pronounced in open court vide separate order)

ORDER

The suit of the plaintiffs is decreed with costs.

Hereby ordered and decreed that, the defendants, their agents, servants or any other persons acting under them are hereby restrained permanently from putting up any illegal construction by encroaching the Galli and further restrained them from interfering with the peaceful possession and enjoyment of the suit schedule property of the plaintiffs.

Further, ordered and directed the defendants to remove water tap and stair case which was constructed over the Galli within 3 months from the date of this order.

Draw decree accordingly.

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