

KAMS710007512009



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

: PRESENT :

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

DATED THIS THE 19th DAY OF APRIL, 2022

O.S./254/2009

PLAINTIFF : Sri.R.Venkatachalaiah
Aged about 61 years
S/o Late Rachaiah
R/at Thrivenigara T.Narasipura

(By Sri.R.N, Adv.,)

-V/s-

DEFENDANTS : 1. Smt.Nagarathnamma
Aged about 61 years
W/o S.Nagaraju
Thriveninagara, T.Narasipura

2. Sri.Fazlul Haque
Aged about 55 years
S/o Late Abdul Haque,
Thriveninagara, T.Narasipura

3. Sri.Siddaiah
Aged about 58 years
S/o Late Basavaiah
Byrapura Village Kasaba Hobli
T.Narasipura Taluk.

4. Smt.Thayyabunnisa
Aged about 58 years
W/o Fazlul Haque

5. Sri.Imdad Ahmed
Aged about 3 years
S/o Fazlul Haque

6. Sri.Asifulla
Aged 36 years
S/o Fazlul Hak
Defendants 4 to 6 are R/at
Thriveninagara, T.Narasipura

7. Sri.Das
Aged about 48 years
S/o LateMalaiah
R/ at Ragachari Hundi Village
Kasaba hobli, T.Narasipura Taluk

8. Sri.Siddaraju
Aged 55 years
S/o Siddaraju
Kendanakoppalu, Sosale Hobli
T.Narasipura Taluk

9. Panchayath Development Officer
Byrapura Grama Panchayath
Byrapura Village T.Narasipura Taluk

10. Executive Officer
Taluk Panchayath
T.Narasipura Taluk T.Narasipura.

(By Sri.D.M.S, Adv., for D-1, Sri.A.P.S,
Adv., for D-4, Sri.H.N.B.N, Adv., for D-8,
Sri.B.M.N, Adv., for D-9, Sri.G.R.S, Adv.,
for D-7 & 10 and D-2, 3, 5 & 6 are
exparte)

Date of institution of the suit	09.07.2012		
Nature of the suit (suit on pronote, suit for declaration and possession suit for injunction, etc.,)	<i>MANDATORY AND PERMANENT INJUNCTION</i>		
Date of the commencement of recording of the evidence	05.08.2015		
Date on which judgment was pronounced	19.04.2022		
Total Duration	Years	Months	Days
	09	09	10

:: J U D G M E N T ::

This suit is filed by the plaintiff against the defendants for the relief of Mandatory and Permanent Injunction by directing the 1st and 2nd defendants to demolish and compound wall as well as toilet and bathroom constructed over the suit 'B' schedule road at their own costs and restraining the defendants their henchmen, their servants, their agents, their legal representatives or anybody acting on behalf of them from putting up any sort of constructions over the suit 'B' schedule road and along with cost of the suit.

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

The plaintiff is in peaceful possession and enjoyment of the suit 'A' schedule property as absolute owner in title along with his family members. On 28.11.1980 the plaintiff has purchased the southern half portion of the 'A' schedule site bearing No.199 measuring East to West 35 feet and North to South 25 feet from its vendor for valuable consideration. Similarly on the same day the 2nd defendant also purchased the northern half portion of the site bearing No.199 measuring East to West 35 feet and north to South 25 feet from the same Vendor for valuable consideration. In pursuance of the said sale deeds, the plaintiff changed Khatha into his name and the 2nd defendant changed the Khatha into his name and both of them constructed their residential houses and started residing with their family members.

3. Further stated that, towards the southern side of the suit 'A' schedule property the property of the 1st defendant is situated. Towards the eastern side of the properties of 1st defendant plaintiff and 2nd defendant the road is existed running from north to south touching to the two cross roads of Thriveninagara leading to T.Narasipura - Mysuru Main Road. It is pertinent to note that towards the southern side of the property of the 1st defendant the cross road is existed apart from the eastern side road. Similarly towards the northern

side of the property of 2nd defendant cross road is existed apart from the eastern side road. But the plaintiff has to use the eastern side road to ingress and egress to reach his house situated in suit 'A' schedule. On or around the suit "A" schedule, absolutely there is no property of 3rd defendant is exhibited at any point of time. In spite of that the 3rd defendant in the second week of February 1996 started illegally interfering with the peaceful enjoyment of eastern side road with a malafide intention and oblique motives to knock of the same in collusion with the then Secretary of Byrapura Grama panchayath by concocting and creating false and bogus documents. Due to which the plaintiff has filed a suit in O.S.No.17/1992 before this Hon'ble Court against the said Secretary and the 3rd defendant for the relief of declaration and consequential relief of permanent injunction in respect of the suit schedule 'A' and 'B' properties as prayed for in the plaint thereon, in which both of them have appeared through their counsels and contested the suit of the plaintiff.

4. Further stated that, after contest the suit of the plaintiff O.S.No.17/1996 is came to be decreed by this Hon'ble Court vide Judgment and Decree dated:04.02.1997 and declared the title of the plaintiff over suit 'A' schedule property, declared the right of way of plaintiff in suit schedule 'B' road and restrained the defendant No.3 and the Secretary of

Byrapura Grama Panchayath (then Mandal panchayath) from interfering with the peaceful possession and enjoyment of the plaintiff over the suit 'A' and 'B' schedule properties. Aggrieved by the Judgment and Decree of this Hon'ble Court the 3rd defendant had preferred an Appeal before the Hon'ble II Additional Civil Judge Senior Division, Mysuru in R.A.No.124/1997, in which the plaintiff appeared through the counsel and resisted the said Appeal. Thereafter in view of the opening of the Civil Judge (Senior Division) Court, T.Narasipura, the said appeal has been transferred and renumbered as R.A.No.127/2001 in which also the plaintiff appeared through counsel and resisted the false appeal of 3rd defendant.

5. Further stated that, thereby the 3rd defendant confirmed that, he has no right to claim suit 'B' schedule road in any manner. As such the 3rd defendant herein being the appellant in R.A.No.127/2001 is came forward to close the appeal under a compromise petition. Accordingly the compromise petition is filed on 04.02.2006 before Lok Adalath and decree was also drawn up in terms of the said compromise petition. The 3rd defendant permanently restrained from interfering with the free movement of the plaintiff and his family members over the suit schedule 'B' property road and the title of the plaintiff over the suit 'A'

schedule property also affirmed and as such the said litigation came to an end. After lapse of a considerable time the 3rd defendant due to his previous vengeance towards the plaintiff again indulged in unlawful activities by instigating the 1st and 2nd defendant to encroach upon the above stated eastern side road, since the property of the plaintiff is situated in between the property of 1st and 2nd defendants, so as to create trouble and harass the plaintiff in all possible manner.

6. Further stated that, the 2nd defendant under the wrongful instigation of the 3rd defendant, unlawfully encroached upon the eastern side road existing on his property in the first week of January 2009 by putting up the Kalli fence and closed the road. For which the plaintiff legally requested the 2nd defendant to remove the said Kalli fence by showing the Judgment and Decree passed by this Hon'ble Court in O.S.No.17/1992 as well as the decree in R.A.No.127/2001. But the legal request of the plaintiff is stood in vain. On the other hand the 2nd defendant in the first week of February 2009 started illegally claiming exclusive right over the suit 'B' schedule road by showing the certified copies of the Judgment and Decree of O.S.No.17/1996 contending that the said Judgment and Decree is not binding on him and he is not a party to said suit. After that the 2nd defendant illegally

constructed the toilet and bathroom in the suit 'B' schedule road.

7. Further stated that, since the 2nd defendant is succeeded to encroach the eastern side suit 'B' schedule road, both the second and 3rd defendants have instigated the 1st defendant to encroach upon the said road existing atleast on her property. According to the 1st defendant digged the trench in the suit 'B' road in the first week of August 2009 with a malafide intention and oblique motives to block the road by constructing the compound wall contending that, she has obtained the necessary license from the jurisdictional Byrapura Grama panchayath and as such the plaintiff has filed an application to the Secretary of Byrapura Grama Panchayath seeking certified copies of the demand register of the 1st defendant for site No.198 and the alleged license said to be issued for the construction of illegal compound wall. For which the Secretary of Byrapura Grama Panchayath has issued endorsement dated:12.08.2009 to the plaintiff stating that no such license is issued to the 1st defendant.

8. Further stated that, inspite of that the 1st defendant under the instigation of the 2nd and 3rd defendants illegally constructed the compound wall on the suit 'B' schedule road to an extent east to West 8 (eight) feet and North to South 50 (fifty) feet and thereby the major portion of the eastern side

road is blocked by the 1st defendant. On 20.08.2009 the plaintiff filed an application before the jurisdictional Byrapura Grama Panchayath's Secretary against the 1st defendant praying to demolish the illegal construction of the compound wall over the suit 'B' schedule road. Since the defendants No.1 to 3 are very strong and influential, the applications submitted by the plaintiff is stood in vain. In fact the defendants No.1 to 3 absolutely having no manner of right to encroach upon the eastern side suit 'B' schedule road in any manner. In spite of that the defendants No.1 to 3 have colluded together and indulged in antisocial activities. The 3rd defendant is also making hectic efforts to encroach upon the suit 'B' schedule road according to his whims and caprice.

9. Further stated that, the plaintiff being a law abiding citizen legally requested and demanded the defendants No.1 and 2 to demolish and remove the illegally constructed compound wall, toilet and bathroom from the suit 'B' schedule road and also requested the defendants for not to attempt to encroach the said road. But all the defendants have not heed to the request of the plaintiff and warned to face dire consequences. Sensing this suit to be led by the plaintiff before this Hon'ble Court, the 2nd defendant has filed false suit in O.S.No.183/2009 before this Hon'ble Court on 26.08.2000 particularly against this plaintiff by way of pleading unsuitable

facts, suppressing material facts as to his illegal constructions of toilet and bathroom on the suit 'B' schedule road and its encroachment by putting up Kalli fence by taking undue advantage under law. The said suit is pending on the file of this Hon'ble Court.

10. Further stated that, the compound wall, toilet and bathroom constructed by the 1st and 2nd defendants in the suit 'B' schedule road shown in red colour in the rough sketch is deserves to be demolished. The plaintiff is facing lot of inconvenience to reach his house through the suit 'B' schedule road. Therefore, the cause of action arose to file this suit and prayed to decree the suit.

11. On service of summons, the defendants appeared through their counsels before the Court and the defendants No.1 to 3 and 7 are filed written statements and denying all the averments made in plaint. The 1st defendant in her written statement has contended that, the suit is not maintainable either on law or on facts. Further she contended that, she had two sites towards southern side of the suit 'A' schedule property and the said sites bearing No.198 and 25, measuring about 50 x 35 feet and 40 x 30 feet with common boundaries. The site No.25 was granted by government in favour of the defendant No.1 in the year 1982, the said site is situated towards eastern side abutting to the site No.198. The 1st

defendant has been in possession and continuous peaceful enjoyment over the above said sites from the last several years. The Khatha of the said sites were standing in the name of the 1st defendant and she paid the tax to the government periodically. Moreover the plaintiff has no locus standy to claim the right over the 1st defendant's properties in between two sites, since she has got 11 feet road from the northern side cross road up to 'A' Schedule property and the suit is bad for mis joinder of parties. The plaintiff has not come to this Hon'ble court with clean hands, he has suppressed the material facts and files this false suit against the defendant No.1 with a false set of facts. Hence, prayed to dismiss the suit with cost.

12. The 2nd defendant in his written statement has contended that, he is the owner in possession and enjoyment of the property and he has purchased vacant site from its previous owner through the registered sale deed dated: 29.11.1980. The property purchased by him bearing No.199 measuring East to West 35 feet and North to South 25 feet. The boundaries for the vacant site purchased by this defendant is east by road, west by house of C.Nanjundappa, north by road and south by property of the plaintiff within the boundaries mentioned in the sale deed the vendor has not retained any property. In pursuance of sale deed Khatha is

changed into the name of defendant and he has been paying Tax to the Panchayath. On 02.01.1985 he has obtained license from Byrapura Mandala Panchayath for the purpose of construction of residential house and accordingly house was constructed. Within the schedule boundaries mentioned in the sale deed the vendor has not retained any property and he is in possession and enjoyment of the said property. The house was constructed and towards eastern side toilet and bothroom was constructed by him and he has grown coconut trees in the schedule property towards eastern side. The 1st defendant also purchased vacant site towards southern side of the property purchased by this defendant and he has constructed house. In the sale deeds eastern side boundaries is mentioned as road, towards eastern side of vacant site house of 2nd defendant is situated. The plaintiff being aware of all this facts has not whispered this particular fact in the plaint.

13. Further contended that, The defendant No.3 started claiming towards eastern side of property of this defendant their exist a property belonging to 3rd defendant as per the decree passed by this Hon'ble court and easementary right is granted and all that ground they started interfering with possession and enjoyment of the defendant and also attempting to demolish toilet and bathroom constructed by him in his property towards eastern side. In the month

January 2009 this defendant has obtained certified copies of records in O.S.No.17/1992 and R.A.No.127/2001 and came to know that defendant No.1 filed a suit against the defendant No.3 and Secretary before this Hon'ble court and obtained a decree and in the appeal they have filed compromise petition and accordingly 11 feet of the property is granted as right of way to the plaintiff. In the said proceedings this defendant and neighboring owners have not been made as parties and hence the Judgment and Decree passed by the court is not binding on this defendants. After noticing the interference on the part of plaintiff and defendant No.3 this defendant filed a suit before this Hon'ble court in O.S.No.183/2009 for the relief of declaration and injunction. The said case is still pending. The plaintiff and the defendant No.3 colluded with each other and obtained a decree by suppressing all material facts have entered into compromise in R.A.No.127/2001 and got the decree in respect of the properties which are not vested with their rights. As per the recitals and boundaries in the sale deed in respect of the property purchased by this defendant he has constructed a house with valid license. As per the license obtained the plaintiff eastern side boundary is mentioned as road, norther side boundary is mentioned as road instead of property of this defendant. This clearly goes to show that, the plaintiff has furnished false boundaries. As per the boundaries mentioned in O.S.No.17/1992 eastern side boundary is

mentioned as property of the 3rd defendant but actually eastern side boundary is mentioned as road in the sale deed. The plaintiff, defendants have played fraud upon the court on the basis of false information and documents they have obtained a decree. He is the owner in possession and enjoyment of the property along with his family members. The plaintiff after entered appearance before this Hon'ble court in O.S.No.183/2009 has filed this present suit. It is the plaintiff and defendant No.3 are interfering with possession and enjoyment of this defendant in respect of his property and also attempting to trespass into the property with an intention to demolish the toilet and bathroom constructed in his property and also attempting to cut and remove the coconut trees. The plaintiff is not having any subsisting right to file a suit for mandatory and permanent injunction in respect of schedule properties and there is no encroachment or illegal construction by this defendant. There is a latches, delay on the part of the plaintiff to seek the relief. Hence, prays to dismiss the suit with costs.

14. The 3rd defendant in his written statement has contended that, he was the owner of site measuring east to west 30 feet and north to south 40 feet situated at Thriveninagara extension, T.Narasipura town, which is the site No.26 granted by the then B.D.O. of T.Narasipura Taluk under

the Hakkupathra dated:10.01.1982. Thereafter, Khatha was changed in his name in Janjar No.206 and accordingly he was in possession and enjoyment of the same as the absolute owner and title. In the year 1992 the plaintiff had filed suit in O.S.No.17/1992 on the file of this Hon'ble court seeking right of easement over his site. The said suit ended in compromise in R.A.No.127/2001 on 04.02.2006 before Lok Adalath. As per the said compromised decree, the plaintiff was allowed to use 11 feet as road in the site of this defendant. As such again Khatha was changed in his name to an extent of east to west 19 feet and north to south 40 feet. Accordingly, this defendant has been in possession and enjoyment of the same as absolute owner in title. When such being the case, again the plaintiff has foisted the above frivolous suit on false set of facts and allegations suppressing the compromise decree recorded in O.S.No.72/1992 with oblique intention. In the plaint 'B' schedule intentionally the plaintiff has suppressed the site of this defendant on the eastern boundary which shows with oblique intention on the part of the plaintiff to deprive the right of this defendant over his site. This defendant is not a proper party in the above case because of the facts that his site is situated on the eastern side of schedule property and never interfered with the 'A' schedule property in any manner. The plaintiff in one or the other pretext attempting to dispossess this defendant from his site and thereby violating

terms of the compromised decree of O.S.No.17/1992. Hence, prays to dismiss the suit with costs.

15. The 7th defendant in his written statement has contended that, he has purchased the house property situated towards the northern side of plaintiff's house from its previous owner by name Phazalul haq and his wife and children through the registered sale deed dated:09.07.2010 and he put in possession. Khatha has been changed into his name. He has paying tax. The plaintiff house property and his house property are having common vacant space towards the eastern side and further to that road is exist, where plaintiff is used to go and come. The plaintiff has put village fence over the vacant space adjacent to his house property and parallel to the plaintiff's property. Towards the south of the house properties belongs to other residents have also put compound over the vacant space available and adjacent to their respective houses and those compounds are parallel to the village fences of plaintiff and this defendant. Not only the 7th defendant but his were possessing and enjoying the vacant space available and adjacent to his house. The plaintiff has no right to claim road on the vacant space. The plaintiff has suppressed the material facts of disputes and compromise held with one Siddaiah, even otherwise he is not binding on this defendant. Hence, prays to dismiss the suit with costs.

16. On the basis of pleadings, the following Issues were framed :

I S S U E S

1. Whether the plaintiff proves that the suit schedule 'B' property is a road ?

2. Whether the plaintiff further proves that, he is using the 'B' schedule road to reach 'A' schedule property for his ingress and egress ?

3. Whether the plaintiff further proves that the 2nd and 3rd defendant by encroaching the road they constructed the compound wall, toilet and bath room over B schedule property?

4. Whether the plaintiff is entitled for the relief of Mandatory Injunction?

5. Whether the 1st defendant proves that the plaintiff had 11ft. road towards northern side cross road upto 'A' schedule property as averred in para No.9 of written statement?

6. Whether the 2nd defendant proves that he has not constructed any compound wall by encroaching the 'B' schedule property he constructed house as per the recitals and boundaries mentioned in the sale deed dated 29/11/80 as averred in para No.7 and 8 of written statement?

7. Whether the plaintiff is entitled for relief sought for?

8. What order or decree ?

ADDI. ISSUE

1. Whether 3rd defendant proves that this suit is filed by the plaintiff by suppressing his property towards eastern boundary of suit schedule, as averred in para No.11 and 12 of written statement ?

17. In order to prove his contentions, the plaintiff was examined as PW-1 and got marked 23 documents at Ex.P-1 to 23. On the other hand, the defendant No.1 was examined as DW-1 and got marked 06 documents at Ex.P-1 to 6. Both counsels cross-examined them.

18. Heard the arguments from both the sides and perused the materials on record.

19. In the light of the material evidence on record, the above issues have been answered as under:

- Issue No.1 :** In the **Affirmative**
Addl. Issue No.1 : In the **Negative**
Issue No.2 : In the **Affirmative**
Issue No.3 : In the **Affirmative**
Issue No.4 : In the **Affirmative**
Issue No.5 : In the **Negative**
Issue No.6 : In the **Negative**
Issue No.7 : In the **Affirmative**

Issue No.8 : As per the final order for the following:

REASONS

20. **Issues No.1 to 6** : These issues are taken together for common discussion in order to avoid the repetition of facts and circumstances.

21. This suit has been filed by the plaintiff for the relief of Permanent and Mandatory Injunction over the 'B' schedule property.

22. In order to substantiate his case, the plaintiff is examined as PW-1 and reiterated the plaint averments in his affidavit and got marked 23 documents i.e., the Ex.P-1 & 2 are the Copies of Registered Sale deeds, Ex.P-3 is the Assessment Register, Ex.P-4 is the Tax paid receipt, Ex.P-5 & 6 are the Judgment and Decree in O.S No.17/1992, Ex.P-7 is the copy of order sheet in R.A No.124/1997, Ex.P-8 is the Compromised Petition, Ex.P-9 is the copy of Decree, Ex.P-10 is the Demand Register, Ex.P-11 is the Rough Sketch, Ex.P-12 is the Endorsement, Ex.P-13 to 20 are the photographs, Ex.P-21 is the Application, Ex.P-22 is the Sale deed dated:09.07.2010 and Ex.P-23 is the Rough Sketch.

23. In order to disprove the case of the plaintiff, the defendant No.1 has been examined as DW-1 and got marked

06 documents i.e., the Ex.D-1 is the Sale deed, Ex.D-2 is the Hakku Pathra, Ex.D-3 is the Demand Register and Ex.D-4 to 6 are the Tax paid receipts.

24. The plaintiff contention is that, the 'A' schedule property situated in between the properties of defendants No.1 and 2 towards the eastern side of the property of plaintiff and defendants No.1 and 2, there is a 11 feet road. The defendants No.1 and 2 have encroached the road by constructing the bathroom, toilet and by laying Kalli fence by blocking the said, which is a road to reach the cross road towards northern side. The defendant No.1 has encroached the said road towards eastern side 8 feet by laying new compound wall. The defendant has denied the document, which is marked as Ex.P-11 the rough sketch. But in order to show it is false, created sketch they have not taken any action or filed any sketch of the suit schedule property by disproving the same. There is no dispute by the defendants with regard to suit 'A' schedule property, but there is a dispute with regard to road, which is 'B' schedule property.

25. As contended by the plaintiff there was earlier suit filed by him as per Ex.P-5 Judgment copy in O.S No.17/1998, which was decreed in favour of the plaintiff by granting right to the plaintiff against the defendant. It clearly establishes that, there is a road towards eastern side of 'A' schedule

property. The said suit was decreed against the present defendant No.3 in this case. As per Ex.P-2 the Sale deed, it is very clear that, in the schedule the boundaries towards eastern side mentioned as road. On perusal of Ex.P-10 the Demand register extract of the property of defendant No.1 it reveals that, the extent is mentioned as 35 x 50 feet for site No.198 and in order to rebut the same the defendant No.1 has not filed better document, it establishes that, the defendant No.1 has got extent of his site towards east to west 35 feet, north to south 50 feet. So, the compound extended by the defendant No.1 towards the eastern side by encroaching 8 feet of the road is beyond the extent entered in the demand register. As per the Ex.D-5 also the extent mentioned as 35 x 50 feet. The defendant No.2 has not produced any documents to show that, what is shown in Ex.P-10 the sketch is false and in order to rebut the same nothing has been relied upon by him. When such is the case, the say of the plaintiff is without any alternative is to be believed.

26. Further, when we look into the written statement of defendant No.1 in para No.2, he admitted the cross road running towards northern side house of the defendant No.2 and southern side of the house of defendant No.1, there is a road and further he admitted that, the plaintiff's house is situated in between the properties of the defendants No.1 and

2. When such is the case, the road towards eastern side will be the only way to the plaintiff for ingress and egress. So, by way of the indirect admission given in the said para, he admits that, the plaintiff do not have any alternative way to reach the 'A' schedule property.

27. Further, he has not specifically denied the Kalli fence by the defendant No.2 towards northern side, but he pleaded ignorance of the said fence. He further admits that, he has constructed compound wall in his site No.198 and 25, but it was constructed long back. In the written statement of defendant No.1 he has contended that, the site No.198 and 25 are abutting towards eastern side to 198 and to show that, east to west 50 feet and north to south 75 feet no documents forthcoming.

28. If is is so, the extent including the alleged road of 11 feet with the site extent towards east to west will be around $35+11=46$ only. Then how come the defendant claim his property to an extent of east to west $35+40=75$ feet, is unimaginable one. So, the claim of the defendant No.1 is without cogent evidence. During cross-examination of PW-1 he was suggested after the vacant space of 17 feet there comes the road is admitted by the plaintiff. Further, the defendant counsel made several suggestions with strengthen the case of the plaintiff. As the said 'B' schedule property was 11 feet

road, then the said road is a public road belongs to Panchayath is also suggested to the plaintiff during cross-examination also strengthen the case of the plaintiff. It shows that, there extent of 11 feet road towards eastern side. Then he suggested that, the defendant No.2 sold the said road in favour of the defendant No.7 is admitted by him. He further admitted that, the house of defendants No.1 and plaintiff's house are in parallel line, but he volunteered that, only the house is in parallel line not with respect to the improvements made by the defendants No.1 and 2.

29. By analyzing the over all evidence of the parties it is held that, the public road has been encroached by the defendants No.1 and 2 to their convenience and it is the common rule that, the public road is meant for use of public at large not meant for any private use of particular person. As the defendants admitted there is a road towards the eastern side, construction of the toilet bathroom and Kalli fence blocking of the said road and compound wall constructed by the defendant No.2 is illegal act of the defendants. Therefore, the illegal construction of the compound wall, bathroom, toilet and Kalli fence by way of encroached by the defendants over the 'B' schedule property i.e., the 11 feet road is to be removed. Hence, in view of the discussion made above the

issues No.1 to 4 are answered in the **Affirmative**, Issues No.5 and 6 are answered in the **Negative**.

30. **Issue No.7:** On the basis of above discussion made on the issues No.1 to 6, the plaintiff entitled for the relief as prayed for. Therefore, this issue is also answered in the **Affirmative**.

31. **Addl. Issue No.1:** The defendant No.3 has contended in his written statement that, it is not a proper party in this suit, but he made allegation that, the plaintiff has suppressed the site of this defendant on the eastern side boundary to 'B' schedule property. In this case the disputes with regard to the encroachment made by the defendants No.1 and 2 on 'B' schedule 11 feet road. Hence, this case revolves around the properties of the defendants No.1 and 2 and plaintiff. As this defendant has made nominal party to this suit the contention raised by this defendant does not stand for consideration. As there is suit already decided between the plaintiff and the 3rd defendant in respect of the easement right. Hence, this issue is answered in the **Negative**.

32. **Issue No.8:** For the aforesaid reasons and discussions, this court proceed to pass the following:-

:: O R D E R ::

The suit of the Plaintiff is hereby **decreed with cost.**

By way of mandatory injunction the defendants No.1 and 2 are directed to remove the Kalli fence and compound wall, toilet and bathroom elevated in the "B" schedule "11" feet road at their own cost.

The defendants and their servants, henchmen, their agents and their legal representatives or anybody acting on behalf of them are restrained from putting up any construction over the "B" schedule property.

Draw decree accordingly.

[Dictated to the Stenographer on computer, typed by her, revised and corrected by me and then pronounced in the Open Court on 19.04.2022.]

**(Anitha Kumarie S)
Addl.Civil Judge & JMFC.,
T.Narasipura**

:: ANNEXURE ::**List of witnesses examined on behalf of the Plaintiff:-**

PW-1 : Sri.R.Venkatachalaiah

List of Exhibits marked on behalf of the Plaintiff:-

Ex.P-1 & 2 : Copies of Registered Sale deeds
Ex.P-3 : Assessment Register
Ex.P-4 : Tax paid receipt
Ex.P-5 & 6 : Copy of Judgment and Decree
Ex.P-7 : Copy of order sheet in R.A
No.124/1997
Ex.P-8 : Compromised Petition
Ex.P-9 : Copy of Decree
Ex.P-10 : Demand Register
Ex.P-11 : Rough Sketch
Ex.P-12 : Endorsement
Ex.P-13 to 20 : Photographs
Ex.P-21 : Application
Ex.P-22 : Sale deed dated:09.07.2010
Ex.P-23 : Rough Sketch

List of witnesses examined on behalf of the defendant:-

DW-1 : Smt.Nagarathnamma

List of Exhibits marked on behalf of the defendant:-

Ex.D-1 : Sale deed,

Ex.D-2 : Hakku Pathra,

Ex.D-3 : Demand Register

Ex.D-4 to 6 : Tax paid receipts.

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