

**IN THE COURT OF THE ADDL CIVIL JUDGE AND J.M.F.C AT
CHANNAPATNA**

PRESENT: Smt. Namrata Rao.K.S
B.A.L, L.L.B., M.B.L
Addl., Civil Judge and J.M.F.C.
Channapatna.

Dated this 8th Day of April, 2019

O.S.No: 62/2019

PLAINTIFFS:-

Smt. Venkatalakshamma
W/o Late C. Puttasiddaiah
Aged about 69 years,

Represented by
Smt. S.R. Harshala
W/o M.P. Omprakash
Aged about 31 years,
R/a: Kodamballi Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. M.R.S., Advocate)

-Vs-

DEFENDANTS:-

1. Sri. K.M. Puttegowda
@ Jayaramu
S/o Late Marigowda
Aged about 53 years,

2. Sri. K.M. Shivaramgowda
S/o Late Marigowda
Aged about 50 years,

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3. Sri. K.M. Gopalagowda
S/o Late Marigowda
Aged about 48 years,

4. Sri. Mujahid Pasha
S/o Late Mohammed Ameer
Aged about 53 years,

All re R/a: Kodamballi Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. M.K.N., Advocate for D3)

PARTIES TO I.A.No.IV

Applicant : Smt. Venkatalakshamma
..... Plaintiff

-V/s-

Respondent: Sri. K.M. Puttegowda @ Jayaramu
and othersDefendant

ORDERS ON I.A. No.IV under Order XXXIX
Rule 1 and 2 of CPC

The application due for consideration is filed by the plaintiff under order XXXIX Rule 1 and 2 of CPC to restrain the defendant from obstructing the suit schedule 8 feet road. The defendants have resisted the application.

2. The case of the plaintiff has avvered in the
plaint is as under:

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The plaintiff's property was purchased by the husband of the plaintiff via a registered sale deed dated 04.11.1987. Since the date of the purchase, the plaintiff's husband and then the plaintiff are in possession of the property. Towards, the southern side of the property the defendants are in possession. There is a 8 feet road which is the only road connecting house and the main road. The defendants are obstructing right of the way of the plaintiff by parking their vehicles abruptly. Hence this suit.

3. The defendants in their objections have contended that there exists no road as alleged by the plaintiff and this is an imaginary suit. The defendants are the absolute owners of the Khaneshumari No. 86/1A measuring 59 X 108 feet. The defendants had left a portion of their property to facilitate themselves for access. The plaintiffs had a restricted entry in the 8 feet road to now the plaintiffs are claim right over the road which is not in existence.

4. The affidavit accompayning the I.A. No.IV is nothing but the reiteration of the plaint.

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5. I have heard the counsel for both sides carefully.

6. The points that arise for my consideration is:

1. *Whether the plaintiff has made out a prima-facie case in his favour?*
2. *Whether the balance of convenience lies in favour of the plaintiff?*
3. *Whether the irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?*
4. *What order?*

7. On careful perusal of materials on records my answer to the above points are as under;

Point No.1: In the Affirmative,

Point No.2: In the Affirmative,

Point No.3: In the Affirmative,

Point No.4: As per final order,

for the following;

REASONS

8. Point No.1: It is the case of the plaintiff that the suit schedule road measuring 8 feet is the only way of access to the plaintiff's property. It is her contention that in the sale deed dated 04.11.1987, a right was provided to her in 8 feet road. Per

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contra, the defendants contend that the sale deed through which they acquired right in their property dated 01.12.1989, does not mention the existence of any road. The counsel for the defendants vehemently argued that the suit schedule road which the plaintiff is claiming is the absolute property of the defendants.

9. I have perused the sale deed dated 04.11.1987. At page 3 of the sale deed it is mentioned that there is a 9 feet road in between the property of Khadar Navab Khan and Anwar Pasha as an access to the house.

10. Prima-facie on perusal of the sale deed dated 04.11.1987 which is earlier to the sale deed of the defendants, it appears that the plaintiff is having a prima-facie right of way in the suit schedule road.

11. Hence, I am of the opinion that the plaintiff has shown a prima-facie right existing with her and the intervention of the court is required for protection of such a right. Accordingly, I answer the **Point No.1 in the Affirmative.**

12. Point No.2: It is the arguments of the counsel of the plaintiff that the suit schedule road is the only the access to the

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plaintiff's property and is an easement of necessity. It is further argued by the plaintiff's counsel that the plaintiff is not claiming absolute right over the suit schedule road. But the plaintiff is claiming the right of access provided to her sale deed.

13. I have heard the counsel for both sides carefully and I have also perused the objections filed by the defendants. It is not the case of either parties that there is another road existing as access to the plaintiff's property. Such an argument is not canvassed by the defendants also. Now if at all the right of ingress and egress is obstructed it appears to me that greater inconvenience or absolute inconvenience will be caused to the plaintiff. Therefore, without much discussion I answer the **Point No.2 in the Affirmative.**

14. **Point No.3:** It is the case of the plaintiff that if at all the injunction is denied the plaintiff will be left with no option to go in and come out of her house. If at all the injunction is not granted it is impossible to repair the injury which is not only a material one but also cannot be measured in pecuniary standards.

15. I have perused the records carefully. When at this stage based on preponderance of probabilities it appears that the

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suit schedule road is the only access to the plaintiffs property, if the ingress and egress is blocked the amount of injury cannot be measured in pecuniary standards. If the apprehension of the plaintiff comes into reality and the road is blocked by parking the vehicles in abrupt manner the very prima-facie right which appears to be existing with the plaintiff will suffer. Therefore, I find it absolute necessary to protect the plaintiff's right in the suit schedule property. Hence, I answer the **Point No.3 in the Affirmative.**

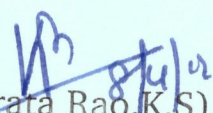
16. Point No.4 : As per the above discussion, I pass the following;

ORDER

The I.A. No.IV is allowed with costs.

The defendants, their agents, followers, anybody claim them are restrained interfering the suit schedule property by parking vehicles obstructing the way till the disposal of the suit.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the open court this the 8th day of April, 2019)


(Namrata Rao.K.S)

Addl., Civil Judge & J.M.F.C,
Channapatna.