

**IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
J.M.F.C. BHADRAVATHI**

PRESENT: Sri.Mahammadali Nayak.,
B.B.A.,LL.B.(Hons.)
I Addl. Civil Judge & JMFC.,
Bhadravathi.

Dated on this the 12th day of December, 2023

ORIGINAL SUIT No.504/2023

Between:

1. Smt.A.S.Sudha,
W/o Late.A.Subhash,
Aged about 60 years,

2. Vishwanath.A.S,
S/o Late.A.Subhash,
Aged about 37 years,

Both are R/o "Mylareshwara Nilaya"
Balakrishna Line,
Ashoka Road, Shivamogga.

..... Plaintiffs

(By Adv.: Sri.V.C.,)

-And-

Smt.Indramma.B.S,
W/o U.Manjunath,
Aged about 50 years,
R/o Kagehalla,
Laxmipura village,
Kudligere Hobli,
Bhadravathi taluk.

..... Defendant

(By Adv.: Sri.A.N.T.,)

In I.A. No.I

Smt.A.S.Sudha and another, ... **Applicants/Plaintiffs**

-And-

Smt.Indramma.B.S, **Opponent/Defendant**

ORDER ON I.A .No.I

The plaintiff has filed application under Order XXXIX Rule 1 and 2 r/w 151 of C.P.C., praying to pass an order of ad-interim exparte temporary injunction restraining the defendants, supporters, agents, legal heirs from making galata and causing obstruction and interference by blocking the road by putting gate lock to 'B' schedule property and not to disturb the possession and enjoyment of plaintiffs in the 'B' schedule property till the disposal of the suit.

2. The reasons ventilated by the plaintiff in the annexed affidavit that, plaintiffs are the owner in peaceful possession and enjoyment of suit schedule 'A' and 'B' properties. The suit schedule 'A' property is an agricultural land in which Areca garden is situated and it is managed by the plaintiffs. The suit schedule 'B' property is a road connected to 'A' schedule

property and it is a part and parcel of 'A' schedule property. The suit schedule "A" property was purchased by the father plaintiff No.1 late.Subhash S/o Gurulingappa through Registered Sale Deed dated 17-11-1999 for valuable consideration from one Smt. Shamshad Begum w/o Fairoz Ahmed and on the basis of said sale deed khata was mutated in the name of deceased Subhash and after the death of Subhash on 14-06-2009 the khata is suit schedule 'A' property was mutated in the name of 1st Plaintiff on the basis of powthi sabubu. In the said sale deed the 'B' schedule property as clearly narrated as road that too be utilize by deceased Subash for carrying agricultural purpose and also in order to reach the main road and said 'B' schedule property is only a connectivity road to the 'A' schedule property which was enjoyed by us since from the date of purchase.

(b).It is further submitted that, plaintiffs and their vendors are in enjoyment of suit schedule 'B' property since from 1981 and they are in possession of said 'B' schedule property since from 1989 as it is used by them for moving the agricultural products to the 'A' schedule property. The

defendant is a stranger to 'B' schedule property not having any right, title and interest over the suit schedule 'B' property and in order to harass them the defendant and her men started to block the road by putting lock to the main gate i.e., entrance of 'B' schedule property and this may let to huge difficult for them to go 'A' schedule property. One week before filing of this suit the adjacent owners of 'A' schedule property and villagers advise the defendant not cause obstruction and interference to their to go to their 'A' schedule property by blocking the 'B' schedule property at that time, she agreed in their presence, but on 19-08-2023 at about 11-00 A.M. once again the defendant and their men came near the suit schedule property and made galata with them and also put threat on them that, they have no right over the 'B' schedule property as if she use the 'B' schedule property then she may filed a complaint of assault and mischief and she shouted that, she is the owner of 'B' schedule property and she also having the right to block the 'B' schedule property by putting gate lock. At this juncture, it is not possible for us to resist the defendant and her men from blocking the road of 'B' schedule property and if the defendant

have block the road then it would cause huge problem for them for my agricultural daily routine work hence they have filed this suit in order to resist the defendant and her men from obstruction and interference over the 'B' schedule property Hence, prays to allow the application.

3. On the other hand, the defendants have appeared before the court and filed the written statement and prayed to treat the written statement averments as objection to the application. In the objection the defendants have contended that, the suit of plaintiff is not maintainable both in law and on facts as such suit for permanent injunction without seeking of declaration with respect of 'B' suit schedule property either by easement or such other reliefs not maintainable. There is no 'B' suit schedule property existence as described by plaintiff and schedule and rough sketch shown with respect of 'B' suit schedule property are all created and connoted under law which is made prepared by plaintiff under their convenience. The defendant got purchased the property measuring 20 gunts situated in survey No.25 of Thi PLLapura Village, Kudliger Hobli,

Bhadravathi taluk through registered sale deed on 03-11-2012 for valuable consideration from her vendors. The property purchased by this defendant is bounded by towards east property of Muddanna is in existence, towards West property of Jayamma and towards North property H.B.Ravikumar and towards South Gadi of Bhadra colony are existence. Since date of purchase the defendant is in peacefull possession and cultivation of said property as owner and all the revenue records stand mutated to her name. The said 20 property is consisting Poultry farm and areca and coconut trees.

(b). It is further submitted that, originally as on the of purchase of defendant in the year 2012-2013 the survey number 25 of Thimplapura village, consisting total extent of 2 acres 19 gunts. Out that, 07 gunts stand in the name of M.Kariyappa S/o Mariyappa, property measuring 20 gunts in the name of vendor of defendant, and 1 acres 30 gunts stand in the name of H.B.Ravikumar S/o Boraiah and 2 gunts consisting as Karab. After purchase the defendant has given an application for Hudubasth survey for her properties both in

survey No.25 as well as survey No,33 measuring 2 acres 23 gunts in the year 2016 itself. As per the said application the survey authority has conducted Hadubastu survey by way of fixing boundary 16-07-2016 with respect of her 20 gunts which reach its finality. Since thereon, the defendant is in possession and cultivation of 20 gunts without anybody interference. In order to reach her both properties in survey No.25 and 33 concern the defendant have formed a road which is commence from northern side to south direction which covered one iron gate. The said road is exclusively belongs to defendant neither plaintiffs nor anybody having any right, title and interest over the same. Towards southern side of 'A' suit schedule property there is channel road is existence which is reached to said property. All the adjacent owner and farmers are use the channel road to reach their respective landed properties including plaintiffs. In order to reach 'A' suit schedule property concern when already channel road existence but the plaintiffs are not disclosing the same.

(c). It is further submitted that, plaintiffs is not having any right, title and interest over the property of this defendant whatsoever in any manner. But in order to have wrong full gain and intention in order cause hardship to her only by way of creating story only present suit filed. By of misleading the fact and circumstance the plaintiffs go secured exparte temporary injunction and trying to cause hardship and inconvenience to defendant. Hence, prays to reject the application.

5. Heard arguments on both sides.

6. Perused the case materials placed on record.

7. After going through the application with affidavit and objection statement, the following points arise for my consideration.

1. Whether the plaintiffs have made out prima-facie case as against the defendant?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether irreparable loss or hardship would be caused to the plaintiffs, if the injunction is not granted in their favour?

4. To what order?

8. This court answers to the above points are as under:

Point No.1 to 3 :- In the Affirmative.

Point No.4 :- As per final orders
for the following:

REASONS

9. **Points No.1 to 3:** Since these points are interlinked with each other and they form part of the same transaction, they are taken up together for common discussion to avoid the repetition of facts.

10. In order to consider the application under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and irreparable injury to the plaintiff. The existence of a prima-facie goes in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima-facie

case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima-facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between. Even granting that the plaintiff has an invincible prima-facie case, they will not be entitled ex debito justitiae, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case.

11. In this background, let me analyses the facts of this case. It is the specific case of the plaintiffs that, he is the

absolute owner in possession and enjoyment of the plaint 'A' schedule property which is acquired by her husband late.Subhash under a registered sale deed dated 17-11-1999 and he died on 14-06-2009. Thereafter, the revenue records mutated in the name of plaintiff No.1 on the basis of powthi katha. It is submitted that, she has acquired the right of the plaint schedule property under a registered sale deed only. The deceased Subash was using the said road to ingress and agrees to the plaint 'A' schedule property. The vendor of the plaintiff's husband has purchased the plaint 'B' schedule under registered sale deed dated 08-03-1989 from one B.C. Shankarappa who purchased the said property from Smt.Jayamma under registered sale deed dated 21-01-1991. The recitals of the sale deed discloses the property purchased by the vendors. It is further submitted that, the Selvi Shekar who is the vendor of defendant has purchased the property under registered sale deed dated 18-09-2008 from one Jayamma and others and towards eastern side there is a road i.e., 'B" schedule property. But, they have mentioned that there is a property of Muddanna. The plaintiff has been using the

plaint 'B" schedule property from moving the agricultural products to the 'A' schedule property. The defendant is a stranger to 'B" schedule proeprty having not manner of right, title and interest over the same. Now, the defendant is trying to block the road by putting lock to the main gate of plaint 'B' schedule property which would cause hardship to the plaintiff.

12. On the other hand, the defendant has denied the case of the plaintiff in toto and inter-alia contended that, there was plaint 'B' schedule property in the Sy.No.25 of Thiplapura village, Kudligere Hobli, Bhadravati taluk and he has admitted that, he is the adjacent owner of the plaint 'A' schedule property towards it's western side. In order to grab his property the plaintiff has come up with this suit. It is further submitted that, the defendant got purchased the property measuring 20 gutnas in Sy.No.25 of Thiplapura village,, Kudligere Hobli, Bhadravathi taluk through registered sale deed on 03-11-2012 for valuable consideration from her vendors. The property purchased by the defendant is bounded by east property of Muddanna is situated, towards western side property of

Jayanna and towards Northern side property of H.B. Ravikumar and towards southern side Gadi of Bhadra colony is situated and there is a poultry farm and areca and coconut trees in this property. It is further submitted that, there is total extent of 2 acre 19 guntas of land in Sy.No.25, out of which 7 guntas of land has been in the name of M.Kariyappa and remaining 20 guntas of land has in the name of vendor of defendant, and 1 acre 30 guntas of land stands in the name of B.H.Ravikumar and 2 guntas consisting as karab land. After the purchase of the said property he has filed an application for Hadubastu survey in Sy.No.25 and 33 in the year 2016 and survey has been conducted by fixing the boundaries on 16-07-2016 with respect to 20 guntas of land. In order to reach the Sy.No.25 and 33 the defendant has formed his road commencing from the side of south direction which covered one iron gate. The said road is exclusively belongs to defendant not to the plaintiffs. Towards southern side plaintiff 'A' schedule property there is a channel road is existence which is used by the plaintiffs to access his property and for others use to reach their properties.

13. In order to establish the prima-facie case, the plaintiffs have produced the 6 photographs, 1 sale deed and other 9 documents like RTC and sale deeds. On perusal of these documents, it appears that, the owner of the plaint schedule property B.C.Shankarappa S/o Chikkanna has purchased the plaint 'A' schedule property along with 'B' schedule property to access his property under registered sale deed dated 21-01-1991. The recitals of sale deed disclose the said fact. Subsequently, the property has been purchased by Shamshad Begum under registered sale deed dated 03-09-1999. Even the sale deed discloses the existence of 'B' schedule property road, thereafter, the plaintiff has purchased the said property. Further, it appears that, the defendant has purchased the property from one Selvi Shekar under registered sale deed 03-11-2012 and the said Selvi Shekar has purchased the 20 guntas of land in SyNo.25 under registered sale deed dated 18-09-2008 from one Jayanna and 3 others. The sale deed of Selvi Shekar who is the vendor of defendant discloses that, on the eastern side there is a road, but, subsequent sale deed of the

defendant does not disclose the existence of said road. On eastern side there is a land of Muddanna. The other sale deed of vendor of plaintiff discloses the existence of plaintiff schedule road to access and ingress to the plaintiff schedule property and other neighboring properties. Though the defendant taken a contention that, the suit is not maintainable, but, at this juncture, it appears that, since there is an existence of road and same has been using by the vendor of plaintiff and defendant, the neighboring properties including the plaintiffs to get right over the said property and also there is no dispute fixing of gate at the entrance of said road. If the plaintiffs are permitted to use the plaintiff 'B' schedule property to ingress and agrees the plaintiff 'A' schedule property by opening the gate it would not cause any hardship to the defendant as is having every opportunity during the course of trial to disprove the case of plaintiff. The plaintiff has established the prima facie case. If the injunction is not granted, the plaintiffs would suffer great hardship which cannot be compensated in terms of money and land of the plaintiffs will be landlocked. Comparitively the more hardship causes to the plaintiffs only. The balance of

convenience lies in favour of the plaintiffs. The plaintiffs have made out sufficient grounds to allow the application. Hence, in the touchstones of reasons assigned above, this court answer **point No.1 to 3 in the Affirmative.**

14. **Point No.4:** In view of aforesaid findings on Point Nos.1 to 3, this court proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w 151 of C.P.C is hereby allowed.

The defendant is restrained by means of temporary injunction from blocking the plaint 'B' schedule property road and usage of the said road by the plaintiffs in any manner till disposal of the suit.

(Dictated to the Stenographer, transcript revised and corrected by me and pronounced in the open Court, on this **12th day of December, 2023**).

(Mahammadali Nayak)
I Addl. Civil Judge & JMFC,
Bhadravathi.

