

IN THE COURT OF THE V SENIOR CIVIL JUDGE, CITY CIVIL COURT
AT HYDERABAD

MONDAY THIS THE TWENTIETH DAY OF JULY
TWO THOUSAND AND TWENTY SIX

PRESENT

SRI BATTULA RAMA RAO
V Senior Civil Judge, City Civil Court,
Hyderabad

O.S.No. 391 OF 2015

BETWEEN:

B. Santosh. S/o Late B. Ram Mohan Rao, Aged about
38 years, Occu: Private Employee, R/o H.No. 1-1-
421/5, Gandhinagar, Hyderabad.

...PLAINTIFF

AND

Venkateswar Rao Vallab, S/o Late V. Madhava Rao,
Aged 64 years, Occ: Advocate, R/o H.No. 1-1-421/6,
Gandhinagar, Hyderabad.

...DEFENDANT

This suit is coming on 02.07.2026 before me for hearing in the presence of **Sri Nagender Rao**, counsel for the plaintiff and of **Sri K. Santanam Iyanger**, counsel for the defendant; upon hearing arguments, upon considering the material available on record and the matter having stood over for consideration, till this day, the Court deliver the following:-

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

1. By this suit for perpetual injunction, the sole plaintiff seeks to restrain the defendant from interfering into his peaceful possession and enjoyment over the 4'0" wide common passage, which is located

on northern side of the plaintiffs North East portion of Ground and First floor bearing Municipal No.1-1-421/5, admeasuring undivided share of land to an extent of 100 Sq.yards, out of 200 Sq.yards situated at Gandhinagar, Gagan Mahal, Musheerabad, Hyderabad.

For the sake of brevity, the 4'-0" wide common passage is hereinafter to be referred as "suit schedule passage" and the aforementioned house of plaintiff shall be hereinafter referred as "suit schedule house".

Averments of plaint, in a nutshell, are as follows:

2. The plaintiff is the absolute owner and possessor of the suit schedule house. He purchased the same from its owners K. Krishna Veni and K. Krishna Satish under a registered sale deed bearing document No.4530/2013, dated 25.11.2013 for valuable consideration. As some mistakes were crept in the said sale deed with regard to the description of the suit schedule house, the vendors of plaintiff executed a registered Rectification Deed bearing document No.259/2015, dated 31.12.2014.

3. That the original owner of the suit schedule house by name K. Hemalatha Devi bequeathed the said property in favour of K. Kamlesh Kumar through registered gift settlement deed bearing

document No.1080/2006, dated 24.3.2006. The said K. Kamlesh Kumar died intestate on 11.11.2012 leaving behind him his wife and son i.e., K. Krishna Veni and K. Krishna Satish, who are vendors of the plaintiff. Since the date of purchase of the suit schedule house, the plaintiff has been in peaceful possession and enjoyment of the same without any hindrance.

4. It is further averred that the defendant is maternal uncle of the plaintiff and **he is the owner of the house bearing No.1-1-421/6 situated at Gandhinagar, which is situated on northern side of the suit schedule house.** Though the plaintiff purchased the suit schedule house through registered sale deed, due to his preoccupation in his employment, he could not mutate the same on his name. The electricity and water bills are issued in the name of original owner K. Hemalatha Devi and the plaintiff is paying the bills regularly.

5. It is further alleged that the suit schedule passage is in existence since from the plaintiff's predecessors in title. The same is apparent in the plan annexed to the sale deed of the plaintiff. The plaintiff schedule passage is in existence since time immemorial and the said passage is being used by the plaintiff and their predecessors

in title uninterruptedly and continuously more than 20 years as a passage for right of ingress and egress to the suit schedule house, apart from that the plaintiff using existing entrance to his property. The defendant, plaintiff and other owners also using the entrance situated adjacent to the defendant house since long period. Apart from the above common entrance, the suit schedule passage towards northern side of the plaint schedule house is exclusively belongs to the plaintiff and the defendant do not have any right over the suit schedule passage.

6. It is further pleaded that the plaintiff applied for new water connection from Hyderabad Metro Water Works and Sewerage Board. The concerned authorities sanctioned water connection to the suit schedule house. To give water connection, the pipelines has to be laid in suit schedule passage. For which, the plaintiff engaged labour. At the time of laying the pipelines, the defendant stopped the work on the pretext that the plaintiff is not entitled to lay the pipeline and he tried to interfere into the peaceful possession and enjoyment of the plaint schedule passage. The defendant is regularly interfering and not allowing the plaintiff to lay the pipeline in the suit schedule passage. Hence the suit.

Averments in the written statement, in breif, are as follows:

7. The defendant denied the material allegations made in the plaint. The suit schedule house is kept on the name of plaintiff nominally as the alleged owners K. Krishna Veni and Krishan Satish involved in criminal conspiracy of Section 302 IPC, in murdering the son of defendant by name V. Kalyan Srinivas and the husband of Krishnaveni and the plaintiff directly involved in the said murder. The plaintiff never in peaceful possession and enjoyment of the suit schedule property as he was involved in the murder case of defendant's son and when police is investigating the case, the entire family members ran away from the suit schedule property.

8. It is further alleged that the defendant is the owner of the house bearing No.1-1-421/6 situated at Gandhi Nagar, Hyderabad, which is situated towards northern side of the plaint schedule property. The vendors of the plaintiff nominally executed the registered sale deed on the name of plaintiff and no monetary transaction was taken place. The defendant denied that the suit schedule passage is in existence since time Immemorial. Since the construction of total property in an extent of 622 Sq.yards and using passage for ingress and egress to the plaintiffs property is middle of

the land for all occupants. ***The defendant, plaintiff and other owners also using the entrance situated adjacent to the defendant house since long period as K.Hemalatha Devi*** who was first purchaser of part of 200 sq.yards out of the total extent of 622 Sq.yards in the year 1961 from the elder brother V. Mahadev Rao and in her sale deed, there is no exclusively 4 feet passage and the 422 sq.yards belongs to Late V. Mahadev Rao. Neither the nominal purchaser i.e., the plaintiff nor the original purchaser K. Hemalatha Devi have right or title over the said passage.

9. It is further alleged that no property is having two passages to reach main road. The suit schedule property of the plaintiff is already a water connection and no separate connection shall be utilized by any party and no question of plaintiff is deprived his right to enjoy the property. The plaintiff and vendors of the suit schedule property colluded since many years and forced to give the entire property to an extent of 622 Sq.yards for development for which the defendant and his son resisted the proposal of the plaintiff and alleged owners K. Krishnaveni and K. Krishna Sathish and Miss. Swetha and K. Kamalesh Kumar and in turn they hatched a plan to kill the defendant, but they did not get chance to eliminate the defendant. But, they kidnapped the son of the defendant while he

was returning back after attending exams and killed him and thrown away on Railway tracks at Lalapet on 08.12.2011. Later the plaintiff and K. Krishna Veni threatened the defendant family to vacate, otherwise they will kill the entire family of the defendant. Finally, the defendant prays for dismissal of the suit.

10. Basing on the pleadings of both parties, the following issues have been framed for trial.

1. Whether the suit schedule passage is in exclusive occupation and use of the plaintiff ?
2. Whether the plaintiff is entitled to the relief of perpetual injunction as prayed for ?
3. To what relief?

11. During trial, the plaintiff himself got examined as PW-1 and marked Exs.A-1 to A-5 and also examined his one of the vendors by name Krishna Veni as PW-2.

On behalf of defendant, he himself got examined as DW-1 and got marked Exs.B-1 to B-3 and also examined one Syed Abdul Raheem as DW-2.

The advocate commissioner Sri T. Vishal Singh was examined as CW-1 and marked Exs.C-1 & C-2.

12. Heard the learned counsel for the plaintiff. Despite giving ample opportunities, the defendant failed to advance his arguments, hence, it was treated as heard.

13. Perused the material available on record.

ISSUES NO.1 & 2:

14. The learned counsel for the plaintiff would contend that the suit schedule passage is in existence since immemorial and that the vendor of the plaintiffs and later plaintiff has been using the said passage and the existence of the plaint schedule passage is mentioned in the sale deed of the plaintiff and his link documents. He further contends that the defendant, who has no right or interest over the suit schedule passage, is interfering into the peaceful possession and enjoyment of the plaintiff over the said passage and also causing hindrance to lay pipeline through the suit schedule passage.

15. PW-1, who is plaintiff filed his chief examination affidavit reiterating the contents of the plaint. PW-2 who is none other than vendor of the plaintiff, deposes that herself and her son got the suit schedule house from her husband Kamlesh Kumar and later both of

them sold the suit schedule property to the plaintiff through registered sale deed. She further testified that there is 4' feet wide passage in existence since long time and the said passage belongs to the plaintiff.

16. The defendant as DW-1 disputed the ownership of the plaintiff over the suit schedule house, testifying that no consideration was passed under Ex.A-1 sale deed said to have been executed by PW-2 and her son Krishna Satish and further he extracted the cross examination of PW-1 and PW-2 in his chief examination affidavit. There is no whisper either in the written statement or in the chief affidavit of DW-1 and that no suggestion is given either to PW-1 or PW-2 or CW-1 that suit schedule passage does not exist.

17. In Ex.A-1 sale deed of the plaintiff, on northern side of the suit schedule house, the 4 feet wide common passage (suit schedule passage) and house of defendant i.e., H.No.1-1-421/6 is shown. It means the suit schedule passage is in existence in between the houses of plaintiff and the defendant. The same is also shown in the map appended to the plaint. If such is the case, the house of defendant should be on northern side of the suit schedule passage, but the plaintiff shown 18 feet wide road on northern side of suit

schedule passage and the house of defendant is shown on eastern side to the suit schedule passage. The plan submitted by the plaintiff along with plaint and the rough sketch plan appended to Ex.C-1/Commissioner Report is not in consonance with each other and not clearly depicting the suit schedule passage and its boundaries. Therefore, it can be said that the boundaries of the suit schedule passage as shown by the plaintiff are incorrect.

18. Though the defendant disputed the ownership of the plaintiff over the suit schedule house alleging that no consideration was passed under Ex.A-1 and it is a nominal document executed in favour of plaintiff, as can be seen from the cross examination of PW-1 and PW-2 coupled with Exs.A-1 to A-3, it can be said that the plaintiff is the owner of the suit schedule house. It is also an admitted fact that defendant is owner of house bearing No.1-1-421/6. As per Ex.C-1/Commissioner Report, there is no compound wall dividing the defendant portion of land with the house of the plaintiff.

19. It is not the case of the plaintiff that the suit schedule passage is part and parcel of his property i.e., suit schedule house. Admittedly, the suit schedule passage is one of the boundaries of the house of plaintiff. Further the suit schedule passage is surrounded

by house of plaintiff, house of defendant, house No.1-1-421/4 and house No.1-1-421/A/3. In Exs.A-1 to A-3, the suit schedule passage is shown as "common passage", which means it shall be used by all, but not the exclusive property of the plaintiff. PW-2 testified that the said passage belongs to the plaintiff. If really the said passage is exclusive property of the plaintiff, it should have been shown as part of house of the plaintiff rather mentioning northern side boundary. Since the suit schedule passage is shown as northern boundary of the suit schedule property, the plaintiff did not pay any consideration for the said passage, therefore he cannot claim the said passage as his exclusive property. Further DW-1 also categorically deposed that all together using the common passage from house No.1-1-421/5, 1-1-421/6/A and 1-1-421/6 to reach 20 feet main road. Therefore, mere using a common passage by the plaintiff does not create any exclusive right over the same to the plaintiff excluding persons, who are also using the same.

20. This Court come across the judgment rendered by the Hon'ble High Court of Andhra Pradesh in a case between **M. Nagamma v. D.A. Nathan and others**¹, wherein it has been held that;

¹

AIR 2005 AP 69 = 2004(6) ALT 516

"The granting of injunction is a discretionary relief to the court and the same cannot be granted over road margins".

21. In a suit for injunction simplicitor, the primary ingredient that has to be proved 'the possession on the date of filing of the suit. It is a settled principle of law that no one can take law in his own hands. Even a trespasser in settled possession cannot be dispossessed without recourse of law. In the case on hand, the suit schedule property is a common passage, which is meant for using by all the adjacent house owners and as such, even if it assumes that PW-1 is using the same as one of the boundary holders, it cannot be said that it is his exclusive property and he cannot be permitted to occupy the suit schedule property by laying pipelines as if it is his absolute property.

22. In the case between **Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack De Sequeria**², the Hon'ble Apex Court has crystallized, the principles is under:

- (i) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long

²

(2012) 3 SCC 126

possession of years or decades such person would not acquire any right or interest in the said property.

- (ii) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
- (iii) The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
- (iv) The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.
- (v) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

23. In the present case also the plaintiff claims his possession over the suit schedule passage since the date of Ex.A-1 and prior to that, his vendors were in possession of the same. If the case of plaintiff is accepted for a while as true, as held by the Hon'ble

Supreme Court in the above judicial precedent, the plaintiff does not acquire any right or interest for himself over such property.

24. For the forgoing discussion, it is suffice to hold that plaintiff is not entitled for the equitable relief of injunction. The issues are answered against the plaintiff.

ISSUE No.3: To what relief ?

25. In view of the discussion and finding under issues No.1 & 2, the suit of the plaintiff is liable to be dismissed.

26. IN THE RESULT, the suit of the plaintiff is dismissed. In facts and circumstances of the case, there shall be no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 20th day of July, 2026.

V Senior Civil Judge,
City Civil Court, Hyderabad

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

On behalf of Plaintiff	
PW-1	B.Santosh
PW-2	Kolapally Krishna Veni

On behalf of Defendant	
DW-1	Vallabha Venkaeshwar Rao
DW-2	Syed Abdul Raheem

DOCUMENTS MARKED FOR PLAINTIFF

Sl.No.	Date of Document	Description of Document
Ex.A-1	25-11-2013	Certified copy of Sale Deed bearing document No.4530/2013.
Ex.A-2	31-12-2014	Certified copy of Rectification Deed bearing document No.259/2015.
Ex.A-3	24-03-2006	Certified copy of Gift Settlement Deed being No.1080/2006.
Ex.A-4	30-08-1961	Certified copy of Sale Deed bearing document No.2420/1961.
Ex.A-5	02-03-2013	Original Electricity Bill in Name of K. Hemalatha Devi.

DOCUMENTS MARKED FOR DEFENDANT

Sl.No.	Date of Document	Description of Document
Ex.B-1	18-07-1960	Certified copy of sale deed in bearing document No.1644/1960.
Ex.B-2	30-08-1961	Certified copy of sale deed bearing document No. 2420/1961, with legible typed copy.
Ex.B-3	09-07-2023	12 photographs.

CW-1 : Sri T. Vishal Singh, Advocate.

Ex.C-1: Report of Advocate Commissioner

Ex.C-2: Positive photograph along with CD.

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