

**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC., GUBBI**

**Present: Smt. Radha S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated this the 18th day of July 2018

O.S.No.151/2018

Plaintiff : Mahesh K.R. S/o
Rangaswamaiah, 32 years,
R/o Kodlinagenahalli Village,
Nittur Hobli, Gubbi Taluk.

(Sri. A.S.C., Advocate)

.Vs.

Defendants : 1. Gangaraju S/o
Rangaswamaiah,
37 years, R/o farm house,
Halasinanagenahalli Village,
Nittur Hobli, Gubbi Taluk.
And another.

(D1 and 2 Sri. B.S., Advocate)

Applicant : Mahesh K.R.
V/s

Opponent : Gangaraju and another

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

**ORDERS ON I.A. No.I FILED UNDER ORDER 39
RULE 1 AND 2 OF CPC FILED BY PLAINTIFF**

1. The plaintiff has filed this I.A, seeking Temporary Injunction restraining the defendants, their agents, servants or anybody acting on their behalf from interfering with the plaintiff's peaceful enjoyment of B Schedule property till disposal of the suit.

2. The defendants have appeared in the present case and filed their objections to the present application.

3. I have heard Sri ASL advocate for plaintiff and Sri. B.S Advocate for the defendants on I.A.No. I and perused records.

4. The points that arise for my consideration are:

(1) Whether the plaintiff has made out a prima- facie case for granting an order of temporary injunction?

(2) Whether the balance of convenience lies in favour of plaintiff?

(3) Whether the plaintiff has established that irreparable loss and injury will cause to him, if an order of temporary injunction is refused?

(4) What Order?

5. My answer to the above points as here under;

Point No.1 to 3: Affirmative.

Point No.4 : As per final order

::REASONS::

6. Point No.1 to 3 : Since these 3 points are interconnected to each other, hence to avoid the repetition of facts, these points are taken together for discussion. Admittedly plaintiff has filed this suit against defendants for the relief of declaration to use the suit schedule property B property and permanent injunction. The brief case of the plaintiff is that, the plaintiff is the full and absolute owner in physical possession and enjoyment of the suit A- schedule property, the same has been acquired under a unregistered

panchayathi Parikath ya Vibhagapathra dated:31.05.2011 made between the plaintiff and 1st defendant and also their father, the 1st defendant has also acquired the property in the same Sy.No. 50/1 measuring 1 acre 16 guntas including the suit B-schedule property which is situated towards southern side of the A-schedule property, both suit A schedule property and 1st defendant property are situated one by the side of another, it is submitted that after acquisition of the property as stated supra the katha and pahani of the A-schedule property has been transferred in the name of the plaintiff.

7. It is further submitted that while partitioning the properties between the plaintiff and 1st defendant, the 1st defendants has agreed to leave 10 feets road in his property i.e., B-Schedule property towards eastern side in his land bearing Sy. No. 50/1 of Halasinagenahalli village to reach the plaintiff's A-schedule property, the same has

been narrated in the above said unregistered panchayathi parikath ya Vibhagapathra, B-schedule road is only the way to reach the plaintiff's A-schedule property, it is submitted that this road has been utilizing for the purpose of supplying manure to the land and also bringing agricultural produces etc. The rough sketch is also shown at the bottom of the plaint.

8. The 2nd defendant is the wife of the 1st defendant, both defendants have no right to interfere with the plaintiff's peaceful enjoyment of the said road i.e., the B-schedule property, the same has been utilizing for the purpose of supplying manure and also bringing agricultural produces etc,

Further it is the case of the plaintiff that, the defendants have no right to interfere with the plaintiff's peaceful enjoyment of B-schedule property, but the defendants are by colluded with

each other are attempted to interfere with the plaintiff's peaceful enjoyment of the B-schedule property i.e, the defendants have attempting to abstract ingress and egress through B-schedule property by denying the right of the plaintiff over the B-schedule property, for which they have no right to do so, hence the plaintiff has filed suit against the defendants along with present application with above relief. On these grounds the plaintiff prayed to allow the present application.

9. The defendants have appeared in the present case through their counsel and filed objections to the present application. In the objection the defendants has admitted the relationship with the plaintiff and also admitted the partition effected between them and plaintiff and also admitted his property which is situated towards the southern side of the suit schedule A property. Further the defendants have admitted that, the defendant No.

1 is the absolute owner in possession and enjoyment of Sy. No. 50/1 measuring 1 acre 16 guntas, in this property the defendant No. 1 has left 10 feet width path way to his brother i.e. plaintiff, the said 10 feet width path way is left by the defendant No. 1 in his land is not existing in the extreme edge of the eastern side but the same is in the inner portion of his property towards the eastern side, in the said edge of the property the defendant's yeilding coconut and areca nut trees are standing. As such the defendants pleaded that, these is no path way is existing as prayed by the plaintiff in his suit, on these grounds the defendants have prayed to dismiss the present application.

10. In support of his contention the plaintiff produced xerox copy of panchayath parikath ya partition deed dated 31-05-2011 and RTC for the year 2017-2018 pertaining to suit schedule

property, these documents prima facie discloses the name of the plaintiff.

11. On the other hand defendants in support of their defense have produced photographs, while perusing these photographs, it is crystal clear that, there is a path way existing in the B suit schedule property as pleaded by the plaintiff.

12. In the present case trial has to be conducted to prove the case plaintiff but at this stage it seems to the court that, till the disposal of the suit the defendants must restrain from their acts as prayed in I.A, If the defendants are not restrained the very purpose of filing of the suit shall be defeated, more over the defendants have not denied the partition effected between the plaintiff and defendant No. 1 as such no harm or injustice will be caused to the defendants if this application is allowed. Therefore I am of the considered opinion that defendants are to be

restrained from interfering into the peaceful enjoyment of the plaintiff over the B suit schedule property specially to ingress and egress to the A schedule property through B shedule property. Hence this court of the considered opinion that plaintiff has made out prima facie case and balance of convenience is also lies in favour of plaintiff. If order of injunction is not granted definitely irreparable loss and injury would be caused to the plaintiff rather than the defendants. Hence I answer Points No.1 to 3 in Affirmative.

13. Point No.4 : In view of discussion made on point No.1 to 3 above, I proceed to pass the following;

O R D E R

I.A.No.I filed Under Order XXXIX Rule 1 and 2 of CPC by plaintiff is hereby allowed.

Defendants, their agents, servants or anybody acting on their behalf are hereby restrained from interfering into the peaceful

enjoyment of plaintiff over the 'B' schedule property till disposal of the present suit.

Cost of this I.A. shall follow the final result of the suit.

(Prepared by me directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on 18th day of July 2018.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.