

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

Present: Sri. Ganesha N. M.A., LL.B.,
Addl. Civil Judge & JMFC.,
Gubbi.

Dated this the 26nd of February of 2018
O.S.No 444/2016

Plaintiff:- Jayalakshamma

Vs.

Defendants:- Lakshamma and
others.

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

The applicant/plaintiff has filed this application under order 39 Rule 1 and 2 CPC seeking an order of temporary injunction restraining the defendants or their agents or servants or anybody acting on their behalf from in any way abstracting the use of suit schedule pathway which runs in the land of the defendant marked as EFGH in the plaint rough sketch which is the suit schedule “ B ” property during the pendency of the suit.

2. In the affidavit accompanying to this application stated that the plaintiff is the absolute owner in possession

and enjoyment of the plaint ' A ' schedule property having acquired the same under the registered Gift Deed on 09-05-13 executed by his husband Rajanna. The defendant No.1 and 2 are the husband and wife, the defendant No.3 is their son. It is further stated that the defendants are the adjacent owner of their land in Sy.No.59/1 measuring 1 acre 32 ½ and Sy.No.60/2 measuring 37 ½ guntas on the western side of the suit schedule ' A ' property. It is stated that there is a Bandi Dari the Donnere village and it starts from Railway Track and it reaches the Forest Plantation. The said Bandi Dari runs on the agricultural lands of the villagers and on the land of the defendants in Sy.No. 59/1 and 59/2 in the middle portion in north south direction. It is further stated that the said Bandi Dari is marked as ABCD in plant rough sketch. Plaintiff stated that there is a path way to the width of 10 feet the north-south direction and to the length of more then 110 feet in the East-West direction in the land of the defendat in Sy. No.59/1 on the northern portion and it is marked as EFGH in the plaint rough sketch which is the suit ' B' property. It is further stated that said pathway

stats from the Bandi Dari marked as ABCD in the plaint rough sketch and it reaches the suit schedule ' A ' property in Sy.No. 59/2. The said path way is in existence from the time immemorial and it was using by the vendors of his husband and then by his husband and now the plaintiff continuously to reach the suit schedule "A" stated that agricultural land bearing Sy.No. 199/2C, measuring 1 acre 16 guntas, situated at Marashettihalli village, Kadaba hobli, Gubbi taluk which originally belongs to one Gurusiddappa who is his husband. It is further stated that during his life time he was in possession and enjoyment of the same as absolute owner. After his death, plaintiff inherited the same under Pavathi Varasu. Accordingly revenue authorities have changed the khata and pahani to her name. Plaintiff have been in possession and enjoyment of the same as absolute owner, which is herein after called as suit schedule property. All the revenue documents stand in her name. It is further stated that she has been paying Kandayam to the said property regularly to the Govt. It is further stated that plaintiff have dug bore well in the suit property. It is

pertinent to note here that she dug four bore wells, but all the said bore were failed. At last she dug the 5th bore well and now she got sufficient water in the said bore well. Making use of the said water plaintiff grown Arecanut and Coconut trees which are yielding crops. It is further stated that except the suit schedule property plaintiff have no other land for earning the livelihood. The defendant is the Govt. authority having no manner of right, title, interest, trying to lay foundation for the purpose of erecting pillar for shifting the electric lines through the suit schedule property. Earlier the said authorities have surveyed the land about 3 months back which is 1.5 kilo meter away from the suit schedule property . As the owners of those lands opposed the same the authorities are now taking undue advantage of her old age and ennocence, have re-surveyed the said project which is now passing through the suit schedule property. If the defendant is allowed to shift the electric line in the suit schedule property she loss her property which is the only means of earning her livelihood and coconut and arecanut trees will be destroyed. It is

further stated that defendant is trying to interfere with plaintiff peaceful possession and enjoyment for which the defendant has no manner of right, title, interest or muchless possession over the suit schedule property. Moreover, the defendant without acquiring the said land and without paying any compensation to plaintiff, is trying to lay the electricity poles in the suit property that too over the bore well situated in the suit property, for which the defendant has no right to do so. Plaintiff has further stated that an aged woman cannot resist the illegal acts of the defendant. Hence this application.

3. Per contra the defendants filed memo to adopt the written statement as objection to the I.A. No.1. In the written statement it is submitted that is submitted that the husband of the plaintiff namely Rajanna had purchased 1 acre out of 1 acre 16 guntas of land in the Sy. No. 60 of Donnere under regd. Sale deed dated 05-11-98 by the brother of the 1st defendant namely adaveeshaiah in which he was in possession and enjoyment. It is further submitted that the said 1 acre is bound by east: Kenchanahalli

boarder, West remaining land of Adaveeshaiah, north: land of Shivanna and south: land of Shantharaju. Again the said Rajanna had purchased remaining 16 guntas of land in Sy.No. 60 belong to the said Adaveeshaiah under regd. Sale deed dated 27-10-05. It is further submitted that the said 16 guntas of land in bound by east: land of Rajanna, west: land of Patel Eregowda, north : land of Lolakshamma and south : land of Shantharaju. Since then the said Rajanna is in possession and enjoyment of the said properties situated within the said boundaries. And he reaches his said land through the Govt. land situated by the side of the railway track and then passes through the land of Shantharaju. Now his wife namely the plaintiff is also using the said road. It is further submitted that neither the plaintiff nor her husband have got any right, title, interest, possession and enjoyment over the Sy.No.59/2 and further it is submitted that the husband of the plaintiff has purchased 1 acre 16 guntas of land in the Sy.No. 60 of Donnere only. It is further stated that even though the plaintiff or her husband are having no right, title, interest, possession and enjoyment

over the land in Sy.No. 59/2, colluded with the erring Revenue officials have got measured and made durast and thereby they have got entered their names in the RTC of the Sy.No. 59/2 and Sy.No. 60/3 to an extent of 37.08 guntas and 18.08 guntas respectively. The said documents are concocted and illegal and the defendants have reserved their right to take legal action against the said illegal entries in the revenue documents. It is further stated that plaintiff had lodged complaint on 14-07-16 to sub-inspector of police, Gubbi police station and SC and ST Cell , Tumkur, In the said complaint she had lodged that they have got no any road to reach their land. But in this suit she had pleaded that there is path way in Sy.No. 59/1 to reach their land from bandi dari and she is using the same. This reflects that no any path way is in existence as mentioned in plaint rough sketch. Hence prays to dismiss the application.

4. Heard counsel for plaintiff and defendants perused the pleadings, I.A. No.1, affidavit and other materials on record.

5. The points that arise for my consideration are;

- 1) Whether the plaintiff made out a prima facie case?
- 2) Whether the balance of convenience lies in plaintiff's favour?
- 3) Whether irreparable loss will be caused to the plaintiff if this application is not allowed?
- 4) What order ?

6. My answer to above points are as under;

Point No.1 to 3 – Affirmative

Point No.4- As per final order for the following;

REASONS

7. **Point No.1 to 3** - Since these points are interconnected with each other, taken up together for consideration to avoid the repetition of facts and circumstances of the case. The plaintiff has filed this suit against the defendants for declaration and permanent injunction and other reliefs. plaintiff is the absolute owner in possession and enjoyment of the plaint ' A ' schedule property having acquired the same under the registered Gift Deed on 09-05-13 executed by his husband Rajanna. The defendant No.1 and 2 are the

husband and wife, the defendant No.3 is their son. It is further stated that the defendants are the adjacent owner of their land in Sy.No.59/1 measuring 1 acre 32 ½ and Sy.No.60/2 measuring 37 ½ guntas on the western side of the suit schedule ' A ' property. It is stated that there is a Bandi Dari the Donnere village and it starts from Railway Track and it reaches the Forest Plantation. The said Bandi Dari runs on the agricultural lands of the villagers and on the land of the defendants in Sy.No. 59/1 and 59/2 in the middle portion in north south direction. It is further stated that the said Bandi Dari is marked as ABCD in plant rough sketch. Plaintiff stated that there is a path way to the width of 10 feet the north-south direction and to the length of more then 110 feet in the East-West direction in the land of the defendat in Sy. No.59/1 on the northern portion and it is marked as EFGH in the plaint rough sketch which is the suit ' B ' property. It is further stated that said pathway stats from the Bandi Dari marked as ABCD in the plaint rough sketch and it reaches the suit schedule ' A ' property in Sy.No. 59/2. The said path way is in existence from the

time immemorial and it was using by the vendors of his husband and then by his husband and now the plaintiff continuously to reach the suit schedule "A" stated that agricultural land bearing Sy.No. 199/2C, measuring 1 acre 16 guntas, situated at Marashettihalli village, Kadaba hobli, Gubbi taluk which originally belongs to one Gurusiddappa who is his husband. It is further stated that during his life time he was in possession and enjoyment of the same as absolute owner. After his death, plaintiff inherited the same under Pavathi Varasu. Accordingly revenue authorities have changed the khata and pahani to her name. Plaintiff have been in possession and enjoyment of the same as absolute owner, which is herein after called as suit schedule property. All the revenue documents stand in her name. It is further stated that she has been paying Kandayam to the said property regularly to the Govt. It is further stated that plaintiff have dug bore well in the suit property. It is pertinent to note here that she dug four bore wells, but all the said bore were failed. At last she dug the 5th bore well and now she got sufficient water in the said bore well.

Making use of the said water plaintiff grown Arecanut and Coconut trees which are yielding crops. It is further stated that except the suit schedule property plaintiff have no other land for earning the livelihood. The defendant is the Govt. authority having no manner of right, title, interest, trying to lay foundation for the purpose of erecting pillar for shifting the electric lines through the suit schedule property. Earlier the said authorities have surveyed the land about 3 months back which is 1.5 kilo meter away from the suit schedule property . As the owners of those lands opposed the same the authorities are now taking undue advantage of her old age and ennocence, have re-surveyed the said project which is now passing through the suit schedule property. If the defendant is allowed to shift the electric line in the suit schedule property she loss her property which is the only means of earning her livelihood and coconut and arecanut trees will be destroyed. It is further stated that defendant is trying to interfere with plaintiff peaceful possession and enjoyment for which the defendant has no manner of right, title, interest or

muchless possession over the suit schedule property. Moreover, the defendant without acquiring the said land and without paying any compensation to plaintiff, is trying to lay the electricity poles in the suit property that too over the bore well situated in the suit property, for which the defendant has no right to do so. Plaintiff has further stated that an aged woman cannot resist the illegal acts of the defendant.

8. The plaintiff has produced the original gift deed dated 09-05-15, certified copy of the MR, certified copy of the RTC's, certified copy of the Akar bank durast, certified copy of the Patta book and 2 photographs. The defendants has produced photo copy of sale deed dated 05-11-98 and sale deed dated 27-10-15 and the copy of complaint. There is no dispute between the suit parties pertaining to extent of land and their titles. The contention of the plaintiff is that a bandidari which runs on the land of defendants in the middle portion of both Survey numbers. The further contention of the plaintiff is that there is a path way to the

width of 10 ft. in the north-south direction and to the length of 110 ft in the land of defendant in Sy.No. 59/1 on the northern portion the said pathway starts from Bandidari and reaches the suit schedule A properties which is existing since from the time immemorial. The defendant contention is that there is no path way or bandidari in their properties. Hence he prays to dismiss the application. The plaintiff has produced the sufficient materials which includes the akr band durast, Survey sketch wherein the path way is shown and which shows the prima facie case of the plaintiff at this stage. Hence the balance of convenience lies in favour of the plaintiff. If the application is not be allowed the loss and injury would be to the plaintiff. Hence I answered point No.1 to 3 in the affirmative.

9. Point No. 4- In view of above discussion I proceed to pass the following;

ORDER

I.A.No.1 filed by plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Defendants are restraining from in any way abstracting the use of suit

schedule pathway which runs in the land of the defendant marked as EFGH in the plaint rough sketch which is the suit schedule “ B ” property during the pendency of the suit.

(Dictated to Stenographer directly and typed by her, script corrected, signed and then pronounced by me in open court on 26th February of 2018.)

(Ganesha N.)
Addl. Civil Judge & JMFC.,
Gubbi.