



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE &
JMFC AT GUBBI**

Dated this the 28th day of January 2026

PRESENT:

**KIRAN S.P., B.B.M., LL.B.,
Prl. Civil Judge and JMFC, Gubbi**

O.S. No. 401/2025

Plaintiff :- Sri. Bettaswamy H.P.

-V/s-

Defendants :- Sri. Girish & others

CAUSE TITLE ON IA No.I

Applicant: - Sri. Ramesh H.P. (Plaintiff No.3)

(By Sri. S.H.G., Advocate)

-V/s-

Respondents: Sri. Girish

**(Def. No. 1 to 3 by Sri. D.M.N.,
Advocate)**

**:ORDER ON IA No.I FILED BY THE PLAINTIFF No.3 UNDER
ORDER 39 RULE 1 AND 2 of CPC:**

The plaintiffs have filed I.A No.1 U/O 39 Rule 1 and 2 of CPC, seeking temporary injunction, restraining the defendants, or their agents, or anybody acting under them from interfering with the peaceful enjoyment to use



existing road as shown in the annexed rough sketch at ABCD portion to reach the suit schedule properties by the plaintiffs till disposal of suit.

02. In the accompanying affidavit, it is stated that the land bearing old Sy. No.115 new Sy. No.115/3 measuring 3 acre 31 guntas situated at Varahasandra, Kadaba Hobli, Gubbi taluk was originally belongs to one Shidda S/o Jogi Chennegowda of Varahasandra. The said Shidda S/o Jogi Chennegowda was executed the registered sale deed dated:08-06-1924 in favor of the Byategowda @ one Chikkabettaiah S/o Dasappa which was registered on 09-06-1924 before sub-register office Gubbi vide document No.1577/1923-24. From the date of purchase the said Byategowda @ Chikkabettaiah S/o Dasappa who was the ancestor of the plaintiffs was become the owner in possession and enjoyment of the same. After the death of the said Byategowda @ Chikkabettaiah S/o Dasappa the katha was mutated in the name of his son Bettaiah S/o late Chikkabettaiah. After the death of the said Byategowda @ Bettaiah S/o late Byategowda @ Chikkabettaiah kathe is mutated in the name of the plaintiff No.4 to 15 through pavati Varasu and one Narasamma w/o late Dasegowda. The said Narasamma w/o late Dasegowda was died. The mutation also accepted in the name of the plaintiff No.4



to 15 Vide MR.No.H10/2021-22 and the RTC also stands in the name of the plaintiff no 4 to 15. The land bearing Sy No.119/5 measuring 3 acre 10 gunts situated at Varahasandra, Kadaba Hobli, Gubbi taluk was originally belongs to one G.V.Shashidhara S/o K.N.Venkatesh of Bangalore. The said G.V.Shashidhara S/o K.N. Venkatesh was executed the registered sale deed dated:05-08-2011 in favor of the Papanna S/o late Doddamariyappa which was registered before sub-register office Gubbi vide document No. GBB-1-02854/2011-12. From the date of purchase the said Papanna S/o late Doddamariyappa who is the father of the plaintiff No.1 to 3 was become the owner in possession and enjoyment of the same. The said Papanna S/o late Doddamariyappa was executed gift deed in favour of the his sons i.e., plaintiff No.1 to 3 after the gift deed mutation also accepted in the name of the plaintiff No.1 to 3 Vide MR.No.H21/2024-25 and the RTC also stands in the name of the plaintiff No.1 to 3. The plaintiffs are the owners in possession of the above said properties; both the properties are adjacent to each others. The defendants are the owner of the land bearing Sy. No.269/1, 269/2, 269/10, and 269/11. The road is existence in between the land bearing Sy. No.267 and Sy. No.269/1, 269/2, 269/10, and 269/11 of Kalluru village, it is starts form Chamaranahalli Gadi



towards Kalluru in East-West direction. The said road in the land bearing Sy. No.269/11 eastern side of the said land 20 feet length 8 feet width towards North-South direction Kalu dari has been using by plaintiffs and their ancestors for ingress and egress to the suit schedule properties from his house situated in land bearing Sy. No.267/3 of Kalluru Village. In the said road plaintiffs and their ancestors have been using to reach the suit schedule properties from the date of purchase of suit schedule properties. This road is in existence since from time immemorial. This is only one way to reach the suit schedule properties from Chamaranahalli Gadi. Except this road there is no other way to reach ingress and egress of the suit schedule properties. This road is using for carrying agriculture implements and men and manure and Cattels etc. to the suit schedule properties. Hence the plaintiff is having the right of easement of necessity with respect to above said road. This fact is very well known to the defendants, in spite of that the defendants colluding with other villagers with dishonestly, they are attempting to interfere to use existing road which is in between land bearing Sy. No.269/1, 269/2, 269/10, and 269/11 road in the defendants properties, after the said road in the land bearing Sy. No.269/11 eastern side of the said land 100 feet length 8 feet width North-South direction Kalu dari



has been using by plaintiffs and his ancestors for ingress and egress to the suit schedule properties as shown in the annexed rough sketch as ABCD. The defendants are moneyed and very influenced persons in the locality, the plaintiffs are the poor person, not in the position to stop the illegal acts of the defendants without aid of this Hon'ble court hence they filed this suit. Much hardship and injury would be caused to plaintiff if T.I. order is not granted against the defendant. No harm would be caused to the other side if the present application is allowed. On these grounds they pray to allow the application.

03. This application is resisted by the defendants by filing memo to adopt their written statement as objections to IA. No.1. It is the contention of the defendants that the Plaintiffs have filed this suit seeking declaration of right of easement of necessity and permanent injunction against the Defendants in respect of certain properties described in the plaint schedule. The first Defendant, H.B. Girish S/o H.A. Bettaiah, is the absolute owner in possession and enjoyment of the Areca nut garden land bearing Sy. No.269/11 measuring 0-29 guntas situated at Kallur, Kadaba Hobli, Gubbi Taluk. The said land was purchased by the first Defendant under a registered Sale Deed dated:03-10-



2018 from its lawful owner Sri. Narasimhaiah H., for valid consideration. After the purchase, mutation has been effected in M.R. No.H60/2018-19, and the Katha and Pahani stand in the name of the first defendant. The Defendants are in peaceful possession and enjoyment of the said property, which is a well-developed Areca nut garden yielding produce. The Plaintiffs have no manner of right, title, interest or possession over the said property. The alleged "Kalu Dari" or "ABCD road" described in the plaint is non-existent and imaginary. The Plaintiffs have concocted the story of existence of a road only to harass the Defendants and to interfere in their lawful possession. The plaintiffs are having their land towards southern side Water flowing Sampige Halla, Said water following Halla is width of 25 feet. Towards south of the suit schedule property this water flowing hall is in existence. Thereafter towards south of the Halla, there is land of defendants which belongs to kallur Survey number. Halla bifurcate the land of plaintiffs (which is in varahasandra survey number) and the plaintiffs land situated in Varahasandra survey number. Plaintiffs are having Road to reach his land through Mysore-Tumkur tar Road. Even then the plaintiffs are attempting to form a road in the middle of the defendant no.1 property in Sy No. 269/11. The Defendants further submit that they have a proper and



convenient public road access from Mysore-Tumkur Road to reach their property. Hence, the claim of "easement of necessity" as contended by the Plaintiffs is totally false and untenable in law. The Plaintiffs are not entitled to any such easementary right under Section 13 or 15 of the Indian Easements Act, 1882. The defendants specifically deny all the allegations made in paragraphs 1 to 8 of the plaint. The Plaintiffs are put to strict proof of all their allegations, survey numbers, measurements and boundaries. The so-called rough sketch annexed to the plaint is not correct or based on any official survey records. The Defendants submit that the Plaintiffs' lands are situated in a different village and have independent access from Chamaranahalli Gadi side and the Kalluru main road, and therefore there is no necessity or right to claim passage through the Defendants' property. The alleged road mentioned in the plaint is only a false creation to mislead this Hon'ble Court. The Defendants further submit that the cause of action as alleged in the plaint is false, fictitious and imaginary. There has been no obstruction by the defendants as claimed. On the contrary, the Plaintiffs are attempting to interfere with the defendants' peaceful possession and enjoyment of their property bearing Sy. No.269/11, which constrained the Defendants to file O.S. No.437/2024 for permanent injunction against the



very same Plaintiffs. The Defendants submit that the valuation and court fee stated in the plaint are not correct and the suit is liable to be dismissed for want of proper valuation and jurisdictional compliance. The Plaintiffs have not approached this Hon'ble Court with clean hands and have suppressed material facts. The Defendants rely upon all the documents produced in O.S. No.437/2024, including the Sale Deed dated:03-10-2018, Mutation Extract (M.R.No.H60/2018-19), RTC extracts, and Pahani, which establish the Defendants' ownership and possession. The Plaintiffs have filed this false suit only to create a pressure and to interfere with the Defendants' possession. The Plaintiffs have no legal or factual basis to claim any right of way or easement. On these grounds they pray to dismiss the application.

04. Heard both sides.

05. Points that would arise for final determination of this application are as follows;

Point No.1: Whether the Plaintiffs have made out prima-facie case for grant of temporary Injunction as sought in IA No.1?



Point No.2: *Whether the balance of convenience lies in favour of the Plaintiffs?*

Point No.3: *Whether the Plaintiffs will be put to irreparable loss and hardship, if IA No.1 is not allowed?*

Point No.4 : *What Order?*

06. The findings on the above points are as follows:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

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

R E A S O N S

07. **Point No.1:** The plaintiffs have filed the present suit against the defendants for the relief of declaration of right of easement of necessity over the existing road at ABCD portion as per the annexed rough sketch for the ingress and egress and to reach suit schedule properties. It is not in dispute that the defendants are the absolute owners of the land bearing survey number 269/1, 269/2, 269/10 and 269/11 of Kalluru village. According to plaintiffs, the plaintiffs



submits that the defendants are the owner of the land bearing Sy. No.269/1, 269/2, 269/10, and 269/11. The road is existence in between the land bearing Sy No.267 and Sy. No.269/1, 269/2, 269/10, and 269/11 of Kalluru village, it is starts form Chamaranahalli Gadi towards Kalluru in East-West direction. The said road in the land bearing Sy. No.269/11 eastern side of the said land 100 feet length 8 feet width towards North-South direction Kalu dari has been using by plaintiffs and their ancestors for ingress and egress to the suit schedule properties from his house situated in land bearing Sy No.267/3 of Kalluru Village. In the said road plaintiffs and their ancestors have been using to reach the suit schedule properties from the date of purchase of suit schedule properties. This road is in existence since from time immemorial. This is only one way to reach the suit schedule properties from Chamaranahalli Gadi. Except this road there is no other way to reach ingress and egress of the suit schedule properties. This road is using for carrying agriculture implements and men and manure and Cattels etc to the suit schedule properties. Hence the plaintiff is having the right of easement of necessity with respect to above said road. This fact is very well known to the defendants, in spite of that the defendants colluding with other villagers with dishonestly, they are attempting to interfere to use



existing road which is in between land bearing Sy No.269/1, 269/2, 269/10, and 269/11 road in the defendants properties, after the said road in the land bearing Sy No.269/11 eastern side of the said land 120 feet length 8 feet width North-South direction Kalu dari has been using by plaintiffs and his ancestors for ingress and egress to the suit schedule properties as shown in the annexed rough sketch as ABCD.

08. The existence of pathway to an extent of 20 feet length 8 feet width towards eastern side in survey number 269/11 which runs north to south direction is denied by the defendants. There is no available material in order prove the existence of pathway as claimed by the plaintiffs. As per village map there is no path way as claimed by the plaintiffs. It is required to be adjudicated that whether alternative road is available to the plaintiffs or not and it is required to be adjudicated that the plaintiffs have a right of easement as sought for by them. In such circumstances, if the temporary injunction sought by the plaintiffs is granted at this stage, it is nothing but decreeing the suit without holding full pledged trial. If it is rejected, no loss or hardship will be caused to the plaintiffs. By considering overall facts and circumstances of the case, the plaintiffs have failed to make out prima facie case and



the balance of convenience does not lies in their favour. Accordingly the point numbers 1 to 3 are answered in the **Negative**.

09. **Point No.4:** For the foregoing reasons, this court proceeds to pass the following;

ORDER

IA No.1 filed by the plaintiff
No.3 U/O 39 Rule 1 and 2 of CPC
is hereby by rejected.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced
in the open Court on this the **28th** day of **January 2026**)

Sd/-
(KIRAN S.P.)
Prl. Civil Judge & JMFC,
Gubbi.