

KATK510000162024



THE COURT OF PRL.CIVIL JUDGE & JMFC,
KUNIGAL

PRESENT: SMT. SUJATHA A.B.

B.A.L, LL.B.

PRL. Civil Judge & JMFC,
KUNIGAL

DATED: THIS 27th DAY OF SEPTEMBER 2024

ORIGINAL SUIT NO.3/2024

BETWEEN:

Plaintiffs- Smt. Kempamma and others

(By Sri.KHR, Advocate)

AND:

Defendants- Smt Parvathamma and others

(By Sri.YRH., Advocate)

I.	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 of CPC
II.	Relief sought for	To grant an exparte ad-interim order of temporary injunction order against defendants

III.	The date on which the application is filed	02.01.2024
IV.	Number of the application	1
V.	The date on which the objections are filed by	22.04.2024
VI.	The date on which the order were passed on the said application	27.09.2024

RANKS OF THE PARTIES IN IA No.I

Applicant/Plaintiff No.2-

Sr. Rajesh C.H.

Vs.

Opponent/Defendants-

Smt Parvathamma and others

ORDERS ON I.A.No.I

I.A.No.I is filed by the applicants/plaintiffs under Order XXXIX Rule 1 and 2 of CPC, to pass an ad-interim order of temporary injunction against defendants, their servants or anybody acting on their behalf from not interfering with plaintiff's peaceful possession and

enjoyment of the suit 'C' schedule property till disposal of the suit.

2. The plaintiff No.1 has sworn to an affidavit and contended that, they have filed this suit against defendants for the relief of declaration and for permanent injunction land measuring 1 acre 13 guntas out of Sy.No.57/3A originally belongs to Mari Bettegowda S/o Hyamegowda and said Mari Bettegowda had 3 children by name one Hyamagiraiah, Japanaiah @ Bettaiah, and Hyamegowda. After demise of Mari Bettegowda his legal heirs were partitioned said property and in the said partition Hamagiraiah S/o Mari Bettegowda who died and his 1st son Hyamaiah @ Thammaiah and his wife Lakshamma i.e., mother-in-law of 1st plaintiff and mother of 2nd and 3rd plaintiff were allotted 15.08 guntas and Ramanna S/o Hyamegowda allotted 15.8 guntas and

as per said partition M.R.3/2004-05 was effected. The plaintiff contended that the property allotted to Lakshmamma i.e., suit 'A' schedule towards Southern side left 6 feet and husband of the 1st defendant Ramanna left 6 feet towards Northern side of 'B' schedule property and totally 12 feet and 150 feet road was left by plaintiffs and defendants and same was using by both parties for last 40 years and same is described as suit 'C' schedule. Said Lakshmamma had constructed house long back and in the partition between her family said house allotted to Lakshmamma and property allotted to defendants to the extent of 15.8 guntas one house and cow shed are existed and defendants are in possession of the same and towards the house of the defendants Northern side suit 'C' schedule property is situated.

3. According to plaintiff one Lakshamma got 4 children by name Bhagyamma deceased Ramesh, Premamma i.e., plaintiff No.3 and Rajesh i.e., 2nd plaintiff. The plaintiff contended that family members of Lakshamma to construct house have sold some property to defendant No.3 to 7 by orally as well as through sale deed and as per the same, plaintiff No.4, 5 and one Gavi Siddaiah @ Mariyappa and Raju S/o Puttarammaiah have constructed house and they are in possession of the same and same was marked as schedule D,E,F,G, & H and they forms the integral part of suit schedule A. The plaintiff further contended that suit 'C' schedule is the road and from the date of partition plaintiff and defendants and their family members were using the same and both parties having equal right, title over the same. The plaintiffs alleged that the defendants have illegally trying to construct toilet by digging foundation in suit 'C'

schedule property and obstructed the plaintiffs and their vehicles, thereafter the plaintiffs have given complaint and in the police station the defendants agreed to not to interfere to use the said road but inspite of that, the defendants claiming that till deciding of O.S.319/2023 they will not allow the plaintiffs to use suit 'C' schedule. According to plaintiffs except suit 'C' schedule road, there is no other connection road for them to reach to their property and defendants are trying to block the said road permanently. Hence plaintiffs without any alternative have filed this suit and prayed to allow the application.

4. In pursuance of the suit summons, defendants have appeared through their counsel and they have filed written statement and same was adopted as objections by filing memo. In the same the defendants denied the contentions of the plaintiffs except admitting para No.2 of

the plaint and submitted that suit is bad for mis-joinder of unnecessary parties and non joinder of necessary parties and also suit is bad under Sec.41 of Specific Relief Act for the reason the plaintiffs seeking relief in the nature of declaration without there being any elementary right and pleadings of the plaintiffs is silent whether the right of easement to use road by necessity or by a right of prescription. The defendants alleged that plaintiffs with malafide deliberate intention to knock off their property has filed this suit. The defendants contended that the plaintiffs have not shown rough sketch along with plaint and they have not properly moulded the relief. According to defendants land bearing Sy.No.57/3A4 measuring 15 ½ guntas which is written schedule property is ancestral property of defendant no.1 and same is originally belongs to husband of defendant no.1 by named Ramanna.

5. Defendants further contended that during the lifetime of said Ramanna, he had constructed one Mangalore tiled roof house and one A.C. sheet roofed house within the written schedule property and resided along with his family. After the demise of Ramanna, the defendant no.1 and her children jointly succeeded the written schedule property by way of succession by inheritance and they have acquired right, title, interest over the same and mutation also accepted in the name of defendant no.1 and in the name of her son namely Jagadeesha, Ashoka and also in their wife's namely Umarani and Asha to the extent of 15 ½ guntas in Sy.No. 57/3A4. The defendants alleged that plaintiffs are utter strangers to the written schedule property and also nothing to do with written schedule property, but plaintiff No.1 and 6 taking undue advantage of their alleged property situated in the Northern side of the written

schedule property surprisingly came near the suit schedule property on 27.05.2022 and thereby made hectic attempts to encroach the written schedule property on Northern side and out of the said cause of action the 1st defendant had filed a suit in O.S. 319/2023 before the Prl. Civil Judge at Kunigal for the relief of permanent injunction and such other reliefs against the plaintiff No.1, 4, 6 and others and said suit is pending for adjudication. Hence averred that plaintiffs with malafide, deliberate intention to knock of the property of the defendants filed the present suit by suppressing the true facts and contended that there is no road is existence alleged by the plaintiffs, hence the question of usage of alleged road does not arise. The plaintiffs have not approached the court with clean hands and hence prayed to reject the application.

6. Heard arguments from both sides. Perused the materials available on record.

7. The points that would arise for my consideration are:-

(1) Whether the plaintiffs have made out a prima facie case to grant temporary injunction as sought?

(2) Is the balance of convenience lies in favour of plaintiffs?

(3) Whether the plaintiffs will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?

(4) What order?

8. My findings on the above Points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

*Point No.4 : As per final orders
For the following:*

REASONS

9. **Point No.1:-** It is the application filed by plaintiff no.2 in which he contended that sy.no.57/3A in total is measuring 1 acre 13 guntas. Out of which 15 $\frac{1}{2}$ guntas were allotted to one lakshamma who is the wife of deceased Hyamaiah s/o Hyamegowda and she is the mother in law of plaintiff no.1 & mother of plaintiff no.2 & 3 and on the other hand another 15 $\frac{1}{2}$ guntas were given to the share of one Ramanna who is the husband of defendant no.1 & father of defendant no.2 & 3 and both the parties have left 6 ft and in total left 12 ft road in between their property and same is used by plaintiff for 40 years for ingress and egress to their lands. But now contended that defendant trying to prevent their movement in that passage and hence plaintiff filed the

present suit and application and prayed to allow the same. On the other hand defendants have denied the said contention and claimed that there was no road exists in reality and contended that plaintiffs themselves with malafide intention of knocking off their written schedule property and hence claimed that plaintiffs filed the present case by suppressing the true facts and hence prayed to dismiss the present application.

10. In order to support their contention plaintiffs have produced ROR of sy.No.57/3B which is shown to be standing in the name of legal heirs of deceased japanaiah and hyamagiriyaiah. Again plaintiffs also contended that they have also sold part of certain land in favor of plaintiff no.4 to 7 and accordingly they were built their residence over their and lead their life. To support the same they produced sale deed which is executed by one appaji in favour of Choluraiah by selling land of 10 guntas w.r.t to

sy.no.57/3B and on perusal of same it is observed that towards southern direction a way is shown to ingress and egress to their property. Again they have also produced sale deed executed by plaintiff no.2 in favor of one Premamma to the extent of $1\frac{1}{2}$ acre in Sy.No.57/13 as per M.R.No.15/2022-23 and here also it is observed an existence of Road towards southern side and its ROR is also produced.

11. It is further noted that plaintiff has also produced tax demand register pertains to 2022-23 and which shows that plaintiff no.1 and plaintiff no.5 names were shown to be paid taxes for their construction. Again plaintiffs also produced series of E-Khata extract out of which plaintiff no.4 name is shown to be owner of some property along with it her ROR is also produced which shows the sy.no.57/16. Again land belongs to Jayaramaiah, C.H Rajanna and one Puttaswamaiah is produced to

demonstrate that they are resided in suit property for many years. Again plaintiffs are also produced photographs to demonstrate their contentions about the existence of passage towards the southern side of their property. it is clear that some passage is shown over their but whether same is accrued as per the contention of plaintiffs or not is a matter of trial. But by looking at the nature of suit property and its overall there may be inference could be raised with regard to existence of passage to reach to their lands and hence it is necessary to come to the conclusion that plaintiff is successful in showing prima facie case in his side at this stage. Therefore i answer Point no.1 in the **Affirmative**.

12. **Point No.2 and 3 :-** Since these points are involves common facts so in order to avoid the repetition of facts, I combined these two points together for my discussion.

It is pertinent to note that on observing the rival contentions of both these parties and nature of suit schedule properties it is clear that after partition had effected between them plaintiff's have sold it to many persons for their financial needs as a result schedule property i.e. sy.No.57/3A3 is divided into many phodies. So under said circumstances when plaintiff no.2 is claiming existence of road between their property for many years, which is denied by the defendants but certain sale deed speaks about the existence of road towards southern side raises more doubt and necessary to delve deep into it. Moreover when plaintiffs are contending that C schedule property is the only way for all the parties who are residing in northern side of alleged road to ingress and egress out of their property, so in that time it is necessary to preserve said aspect as it is until the final outcome. Otherwise plaintiffs are the one who subjected to face

inconvenience and hardship on the flip side by allowing the present application defendants might not face much hardship and inconvenience during the said period.

Accordingly i answer Issue no.2 & 3 in the **Affirmative**.

13. **Point No.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The I.A.No.1 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendants, their servants or anybody acting on their behalf are hereby restrained from interfering with plaintiff's peaceful possession and enjoyment of the suit 'C' schedule property till disposal of the suit.

No orders as to costs.

*(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open Court on this the 27th **day of September, 2024**)*

(SMT. SUJATHA A.B.)
Prl. Civil Judge & JMFC,
Kunigal.

(Order pronounced in open
court vide separate order)

ORDER

The I.A.No.1 filed by the plaintiffs
under Order XXXIX Rule 1 and 2 of C.P.C. is
hereby allowed.

The defendants, their servants or
anybody acting on their behalf are hereby
restrained from interfering with plaintiff's
peaceful possession and enjoyment of the
suit 'C' schedule property till disposal of the
suit.

No orders as to costs.

For compliance U/S 89 of CPC. Call
on 02.12.2024.

Prl. C.J. & JMFC, Kunigal.