

KATK620004782020



O.S.No.198/2020

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT MADHUGIRI**

Dated this the 14th day of March 2024

PRESENT :

SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.

**Prl. Civil Judge & JMFC,
Madhugiri.**

O.S.No.198/2020

- PLAINTIFFS :**
1. Sri. Ranganatha
S/o late Rangappa,
aged about 57 years
 2. Sri. Krishnappa
S/o late Rangappa,
aged about 55 years
 3. Sri. Venkataswami
S/o late Anjinappa,
aged about 53 years
 4. Sri. Lakshminarayana
S/o late Anjinappa,
aged about 50 years

All are R/o Adavinagenahalli
Village, Suddekunte Post,
Kodigenahalli Hobli,
Madhugiri Taluk.

(By Sri H.V.M., Advocate)

Vs/-

DEFENDANTS : 1. Sri. Nageshappa
S/o late Banoothi Rangaiah
aged about 78 years

2. Sri. Rangadhamaiah
S/o late Banoothi Rangaiah
aged about 76 years

Both are R/o Adavinagenahalli
Village, Suddekunte Post,
Kodigenahalli Hobli,
Madhugiri Taluk.

(By Sri D.V.S., Advocate)

I.A. No.V

Applicants : Ranganatha & others Plaintiffs

Vs/-

Opponents : Nageshappa & others Defendants

* * *

**ORDERS ON I.A. No.V FILED BY PLAINTIFFS UNDER
SECTION 151 OF C.P.C**

When the matter posted for defendant evidence at this stage, this application is filed by plaintiffs are praying this court to pass an order and direct the Dy.S.P. Madhugiri to give police protection to the plaintiffs to make use of the existing Bandi Daari mentioned is 'ABCD' in the plaint rough sketch to reach the suit

properties in view of order dated 24/02/2021 in the ends of justice.

2. In the affidavit annexed to application, plaintiff No-3 averred that they have filed this suit against defendants seeking relief of permanent injunction. Further they are contended that their fathers and defendants and their family members entered into the Palu Vibhagada Parikat dated 28/08/1994, as per said parikat the item No-1 of the suit property fallen to the share of father of plaintiff No-1 and 2 and item No-3 of the suit property fallen to the share of father of himself. Further he contended that they are enjoying the properties, the defendants are no manner of right, title and possession over the suit properties.

3. Further they are contended that there is a Bandi Daari which was utilizing by us to reach their lands for the operation of agricultural works and the defendants are not allowing us to make use of the said Bandi Daari i.e., 'ABCD', so that reason they have filed this suit for relief of permanent injunction against defendants and also filed application under order 39 Rule 1 and 2 of C.P.C and said application was allowed on 24/02/2021. Aggrieved by the said order the defendants are preferred the appeal in M.A.No.9/2021 and said appeal was

dismissed on 06/01/2023 and confirm the order passed by this court. Further they are contended that now recently since 15 days defendants are not allowing us to make use of the Bandi Daari for one or other reason and we cannot enjoy the fruits of the order so that reason he has filed application under Section 151 of CPC for seeking an order of Police aid for implementation of the order of injunction, if the application is allowed no loss or hardship caused to the defendants. Hence he prays to allow this application.

4. Per contra the defendants counsel filed the objection to said application contending that the application filed by the plaintiffs are not maintainable either in law or facts further he contended that plaintiff are trying to form new road in the their property and there is no road in existence in Sy.No.212 and 213. Further he contended that if the police protection will be given the plaintiffs are form new road and the plaintiffs cannot claim road by way of easement right. Further he contended that the alleged palupatti is cooked up and forged document and he also filed the application for appointment of commissioner for local inspection of the suit property to know the existing of the road or not in

Sy.No.212 and 213 and if the application is allowed defendants will suffers irreparable loss and it cannot be compensated in terms of money. Hence he prays to reject the said application.

5. Heard, perused the records placed before the court.

6. The points that arise for my consideration is as under :

- 1) Whether plaintiffs have made out sufficient grounds to allow the application?
- 2) What Order?

7. My findings to the above points is as under :

Point No.1 In the Negative,

Point No.2 As per final order
for the following :

REASONS

8. **POINT No.1** : Admittedly this application is filed by plaintiffs to direct jurisdictional police to give police protection to make use of the Bani Daari as stated the plaint rough sketch 'ABCD' in view of order dated 24/02/2021.

9. on careful perusal of the records admittedly along with suit, plaintiffs are filed application under Order 39 Rule 1 and 2 of CPC seeking temporary injunction order that to restrain the defendants, their agents, servants or anybody claiming under them from destroying the existence of Bandi Daari shown the plaint rough sketch 'ABCD' portion. After defendants are resist the said application and same was allowed by my learned predecessor-in-office on 24/02/2021. Against the said order the defendants preferred appeal in M.A.No.9/2021 and said appeal was dismissed on 06/01/2023. Against the said order the defendants have not preferred any appeal before the appellate court till today.

10. Be that as it may, during the course of arguments of this application, learned counsel for plaintiff contended that now the defendants are obstructing to make use of the said road in view of the order passed by this court. Per contra defendants counsel contended the plaintiffs are intended to form a new road in their property. On considering the rival contention of the both parties, let me see the order passed by this court dated 24/02/2021 on order on I.A.No. same was extracted as under;

“I.A.No-I filed by the plaintiffs under order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Defendants, their agents, servants or anybody claiming under them are hereby restrained by order of temporary injunction from destroying the existing bandi dari mentioned as ABCD in the plaint rough sketch in any mode or manner pending disposal of the suit” on bare reading of the said order it reflects that to restrain the defendants to destroying the bandi dari only and no order to effect that plaintiffs are making use of the said road. Further the plaintiffs are not produce any documents to show that the defendants are trying to interference for make use of the said bandi dari and if the defendants are violated the interim order passed by this court on I.A.No.1 certainly this court granted the police protection for implementation of the order of this court and the relief sought by the plaintiffs is not purview of the order passed on I.A.No.1. Hence, for the above said reasons, I answer point No.1 in the ‘Negative’.

11. **POINT No.2** : For the reasoning’s and findings given to point No.1, I proceed to pass the following :

ORDER

I.A.No.V filed by plaintiff No-3 under Section 151 of C.P.C is to give police protection for implementation of order dated 24/02/2021 is hereby rejected.

No order for cost.

(Typed to my dictation by the Stenographer directly on computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **14th day of March 2024**)

Sd/-
(Raghunatha Gowda K.T.)
Prl. Civil Judge & JMFC,
Madhugiri.