



**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.VI

Applicants : Nageshappa Defendants

Vs/-

Opponents : Ranganatha Plaintiffs

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**ORDER ON I.A.No.VI FILED BY DEFENDANTS UNDER
SECTION-94 R/w, SEC-151 OF C.P.C.**

When the matter posted for defendant evidence at this stage, the present application is filed by the defendant No-1 seeking order of temporary injunction restraining the plaintiffs from forming any road in Sy.No.212 and 213 of Adivanagenahalli village during the pendency of the suit in the interest of justice.

2. In the affidavit annexed to the application, defendant No-1 averred that plaintiffs are filed this suit in respect of

land bearing Sy.No.211 and also obtained an order of Temporary injunction against himself. Further he contended that there is no existing of Bandi dari in our property, now taking of interim order plaintiffs are intended to form new road and the plaintiffs are no manner of right, title over our property. Further he contended that if the plaintiffs are formed new road in our property, we will be put to irreparable loss and injury caused and it will cannot be compensated in terms of money and it is just and necessary to restrain the illegal acts of the plaintiff. Hence he prays to allow this application.

3. Per contra the plaintiff counsel filed objection to said application contended that the application filed by the defendant is not maintainable either in law or facts. 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 if the present application is allowed they have not enjoy the fruits of the order passed by this court. Further defendant filed this application with an intention to dragon the proceedings and

the present application is not maintainable under law. Hence they pray to reject the said application.

4. Heard, perused the records placed before the court.
5. The points that arise for my consideration is as under :
 - 1) Whether defendant No-1 has made out sufficient grounds to allow the application?
 - 2) What Order?

6. 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

7. **POINT No.1** : Admittedly this application is filed by defendant to restrain the plaintiffs to form new road in their property bearing Sy.No.212 and 213 of Adivanagenahalli.

8. 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.

9. Be that as it may, during the course of arguments of this application, learned counsel for defendant contended that now the plaintiffs are forming new road in Sy.No.212 and 213 in this regard the defendants have not placed any material to show that the plaintiffs are intended to form new road in their property nor lodge any complaint to show that the plaintiffs are intended to form new road. Further at this juncture there is no prima facie material to show that plaintiffs are form new road in their property. Moreover at this juncture the defendant failure to establish that he has got prima facie case and balance of convenience lies in his favour. In-order to grant of temporary injunction, 3 essential ingredients have to be fulfilled, Prima-facie case, balance of convenience and irreparable loss or injury. Prima facie case includes maintainability of the suit and probability of defendant succeeding in the case, i.e. entitlement for the reliefs sought. Ongoing through the plaint averments, the plaintiffs have filed the present suit against the defendants seeking for the relief of Permanent Injunction. The defendants have not made out prima-facie. If temporary injunction as prayed by

defendant No-1 is granted, it would cause irreparable loss or injury to plaintiffs. The balance of convenience also lies in favour of plaintiffs. Hence, I answer point No.1 in the 'Negative'.

10. **POINT No.2** : In view of the aforesaid discussion and reasons on point No. 1 to 3, this court proceeds to pass the following :

ORDER

I.A.No.VI filed by defendant No-1 under
Section-94 R/w, Sec-151 of C.P.C is hereby
rejected.

Parties to bear their own costs.

(Dictated to the stenographer directly on computer, corrected by me and
then pronounced in open court on this **14th day of March 2024**)

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