



IN THE COURT OF THE ADDL.CIVIL JUDGE AND
JMFC., Sira

Present: **Sharmila E.J.** BALL.B, LL.M.,
 Addl. Civil Judge & JMFC., Sira

Dated this the **14th** day of **July 2026**

Original Suit.No.386/2025

Plaintiff : Sri.Kadurappa

(By Sri.H.N., Advocate)

-V/S-

Defendant : Sri.Dasappa

(By Sri.S.B., Advocate)

I.A. No.I

Applicant : Sri.Kadurappa (Plaintiff)

-V/s-

Opponent : Sri.Dasappa (defendant)

i	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rules 1 and 2 of CPC.</i>
ii	<i>Relief sought for</i>	<i>Temporary Injunction</i>
iii	<i>The date on which the application is filed</i>	<i>21.08.2025</i>
iv	<i>Number of the application</i>	<i>IA.No.I</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>10.03.2026</i>
vi	<i>The date on which the order was passed on the said application</i>	<i>14.07.2026</i>



**ORDER ON IA No.I FILED BY THE PLAINTIFF UNDER ORDER
XXXIX RULES 1 AND 2 OF CPC**

The present application is filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking an order of ad interim temporary injunction restraining the defendant, his agents, servants, or any person claiming through or under him from causing any obstruction to, or interfering with, the plaintiff's alleged easementary right to use the cart track situated along the northern boundary of the defendant's land bearing Sy.No.143/4 of Doddagula Village, Kasaba Hobli, Sira Taluk, pending disposal of the suit.

2. It is averred in the plaint and the affidavit filed in support of the application that the plaintiff purchased agricultural land bearing Sy.No.143/1A3, measuring 3.00 acres, situated at Doddagula Village, Kasaba Hobli, Sira Taluk, under a registered sale deed dated 04.03.1991 from Smt. Nagamma, and has been in peaceful possession and enjoyment of the same ever since, with the revenue records standing in his name. It is further averred that the plaintiff subsequently sold an extent of 1.00 acre out of the said land to one Dasappa under a registered sale deed dated 08.02.2018, which, after phodi, came to be assigned Sy.No.143/4. Thereafter, Dasappa sold the said land to the defendant under a registered sale deed dated 01.04.2021, while the plaintiff retained the remaining extent of 2.00 acres, which constitutes the suit schedule property.



3. It is further stated that the suit schedule property is adjacent to the defendant's land in Sy.No.143/4 and that a Government halla situated on the western side of the defendant's land has been used by the plaintiff, the defendant and other neighbouring landowners as a cart track. According to the plaintiff, in order to reach the said Government halla and thereafter Doddagula Village, he has been crossing the northern bund of the defendant's land as a matter of easement since time immemorial and there is no alternative means of ingress and egress to the suit schedule property. It is further averred that the defendant, after purchasing Sy.No.143/4, has started obstructing the plaintiff's use of the said cart track by placing obstructions, attempting to install an electric transformer, and putting up stone pillars and wire fencing across the existing pathway. Despite repeated requests and protests, the defendant has allegedly continued with the interference. The plaintiff further asserts that he has a prima facie case, that the balance of convenience lies in his favour and that no hardship will be caused to the defendant if the interim relief sought is granted pending disposal of the suit. Hence, he has prayed for allowing the present application.

4. Per contra, the defendant has filed his written statement and a memo seeking to adopt the same as his objections to the present interlocutory application. The defendant has admitted the plaintiff's title to Sy.No.143/1A3, the subsequent sale of 1.00 acre to



Dasappa and the defendant's purchase of Sy.No.143/4, but has contended that the plaintiff has no easementary right over the defendant's property. It is specifically denied that any cart track exists through or along the northern bund of the defendant's land or that the plaintiff has been using such pathway since time immemorial. It is further contended that the plaintiff has an alternative access to the suit schedule property through a public road situated on the eastern side of the property via the S.C. Colony, which, according to the defendant, had also been used by the plaintiff's vendor prior to the sale. The defendant has also asserted that there is no vacant strip of land between his property and the adjoining lands, that he has cultivated arecanut trees and installed an electric transformer, borewell and pump set in his land, and that the present suit and the application have been filed only to harass him. On these grounds, the defendant has sought dismissal of the application.

5. Despite sufficient opportunity, the learned counsel for the defendant did not advance arguments on the interlocutory application, and accordingly, the defendant's arguments were taken as nil. Upon hearing the learned counsel for the plaintiff and on perusal of the pleadings and materials available on record, the following points arise for consideration of this Court:

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for?



2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put into irreparable loss and hardship if interim application is not allowed?
4. What order?

6. The findings of this Court to the above Points are as under:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

REASONS

7. **Point No.1:** Before proceeding further, it is made clear that the present order is passed only for the purpose of deciding the interlocutory application and without expressing any opinion on the merits of the suit.

8. It is a settled principle of law that the grant of a temporary injunction during the pendency of a suit is not a matter of right, but a discretionary relief to be exercised by the Court on sound judicial principles. It is equally well settled that, before granting such relief, the Court has to be satisfied that the applicant has established: (i) a *prima facie* case; (ii) that the *balance of convenience* lies in his favour; and (iii) that he would suffer *irreparable injury* if the relief is refused.



9. The present suit has been instituted by the plaintiff seeking a declaration that he has an easementary right of cart track over the defendant's land in Sy.No.143/4 for ingress and egress to the suit schedule property, together with the consequential relief of permanent injunction restraining the defendant from obstructing or interfering with the exercise of the said easementary right. It is the contention of the plaintiff that he has been using the cart track by crossing the northern bund of the defendant's land and thereafter passing through the Government halla situated on the western side of the defendant's property to reach Doddagula Village since time immemorial and that there is no other access available to the suit schedule property. According to the plaintiff, such long, continuous and uninterrupted use has entitled him an easementary right, which the defendant has recently obstructed after purchasing Sy.No.143/4. The plaintiff has produced copies of sale deeds, revenue records and photographs to substantiate his claim.

10. The defendant, on the other hand, has specifically denied the existence of any such cart track or easementary right. It is his contention that no pathway exists through or along the northern bund of his land and that the plaintiff has an alternative access to the suit schedule property through a public road situated on the eastern side of the property via the S.C. Colony. Thus, the principal controversy between the parties is with regard to the existence of the alleged cart track, the plaintiff's acquisition of an easementary right



thereover and the availability of an alternative means of access.

11. At the stage of deciding an application under Order XXXIX Rules 1 and 2 CPC, the Court is not expected to adjudicate upon the dispute finally, but to ascertain whether the plaintiffs have made out a prima facie case for granting an injunction. On perusal of the material on record, there appears to be a serious dispute with regard to the very existence of the alleged pathway. The existence of the alleged cart track, the nature and duration of its user, whether the plaintiff has acquired any easementary right, and whether there exists an alternative access to the suit schedule property are all matters of serious factual dispute. These are not issues that can be conclusively determined at this preliminary stage of the proceedings. It is a well-established principle that that the court cannot conduct a mini trial at the time of deciding upon an application seeking temporary injunction. Such matters are to be decided after a full trial, where both sides will have the opportunity to present complete evidence.

12. The present findings are limited to deciding whether temporary relief should be granted, based on the material presently available before the Court. The plaintiff asserts an easementary right over the said pathway, whereas the defendant has specifically denied the same. However, for the purpose of interim relief, the plaintiff is required to prima facie establish the existence of such



pathway and his corresponding right to use it. The documents produced by the plaintiff, namely the sale deeds, revenue records and photographs, though they prima facie show his title and possession over the suit schedule property, do not disclose the existence of any cart track or pathway over the defendant's land. No documents have been produced to prima facie indicate the existence of the alleged pathway. The photographs relied upon by the plaintiff do not, by themselves, establish that the alleged pathway exists over the defendant's land or that the plaintiff has acquired an easementary right to use the same. The averments made in the plaint and affidavit, in the absence of supporting prima facie material, are insufficient to establish the existence of the alleged easementary pathway. Though the defendant has not produced documentary material in support of his objections, the burden at this stage lies upon the plaintiff, who seeks an equitable and discretionary relief, to place prima facie material showing the existence of the alleged easementary pathway. Therefore, in the absence of prima facie material to show the existence of the alleged pathway, this Court is of the considered opinion that the material placed before the Court is insufficient to prima facie establish the existence of the alleged pathway. **Accordingly, this Court answers Point No.1 in the Negative.**

13. Point Nos.2 and 3: These two points being interrelated are taken up together for discussion. With regard to balance of



convenience and irreparable loss, this Court places reliance upon the judgment of the Hon'ble High Court of Karnataka in *Gowrishankar Swamigalu V/s Siddaganga Mutt & others*, reported in ILR 1989 KAR 1701, wherein it has been held:

“...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself...”.

In the present suit, as Point No.1 has been answered in the negative, it follows that the plaintiff has failed to establish a prima facie case. Once the plaintiff has failed to establish a prima facie case, the question of examining the balance of convenience and irreparable injury does not survive for detailed consideration. **Accordingly, this Court answers Point Nos.2 and 3 in the Negative.**

14. Point No.4: In view of the findings given on the above said points, this Court proceeds to pass the following;

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 is hereby dismissed.



No order as to costs.

(Dictation given to the Stenographer, transcribed and computerized by him, then corrected, print out taken, signed by me and pronounced in the open court on this the **14th** day of **July 2026**).

Sd/-
(Sharmila E.J.)
Addl. Civil Judge & JMFC.,
Sira.