

KATK810018252023



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND J.M.F.C., SIRA.**

PRESENT: SRI. SANDEESH T.L.,
B.COM., LL.B.
PRL. CIVIL JUDGE & JMFC,
SIRA.

DATED THIS THE 18th DAY OF JULY 2023

O.S. NO. 117/2023

Plaintiffs

- :1. Eranna,
S/o. Late Thimmanna,
Aged about 55 years,
2. Rajanna,
S/o. Late Eranna,
Aged about 48 years,
3. Manjunatha,
S/o. Late Chikka Kadarappa,
Aged about 58 years,
4. Kadurappa,
S/o. Late Erappa,
Aged about 68 years,
5. Shivanna,
S/o. Late Sanna Erappa,
Aged aobut 49 years,
6. Thimmayya,
S/o. Meke Eranna,
Aged about 34 years,



7. Chikkanna,
S/o. Late Kariyanna,
Aged about 74 years,
8. Jayanna,
S/o. Late Baderappa,
Aged about 40 years,
9. Narasimhaiah,
S/o. Lare Erajja,
Aged about 68 years,
10. Sannamma,
W/o. Late Eriyurappa,
Aged about 58 years,
11. Kenchamma,
W/o. Late Narasimhaiah,
Aged about 52 years,
12. Thippeswamy,
S/o. Late Sanna Kadurappa,
Aged about 45 years,
13. Narasimhamurthy,
S/o. Late Kadurappa,
Aged about 44 years,
14. Basavarajappa,
S/o. Late Basappa,
Aged about 68 years,
15. Boothanna,
S/o. Late Gummanna,
Aged about 75 years,



Plaintiffs No.1 to 15 are
Agriculturists,
residents of
Bejjihally Gollarahatti,
Lakkenahally post,
Hulikunte Hobli,
Sira Taluk,
Tumakuru District.
**(By Sri. S.B. Revanna,
Advocate)**

V/s

Defendants :1. Nanjundappa,
S/o. Thuppanna,
Aged about 75 years,

2. Bhagyamma,
W/o. Nanjundappa,
Aged about 60 years,
Defendants No.1 and 2 are
residents of
Bejjihally Gollarahatti,
Lakkenahally post,
Hulikunte Hobli,
Sira Taluk,
Tumakuru District.
**(Sri. K. Umesh,
Advocate)**

Parties in I.A. No.1

Applicants : Eranna & others



V/s

Opponents : Nanjundappa & another

ORDERS ON IA-No.I

This application is filed by the plaintiff under Order 39 Rule 1 and 2 r/w 151 of CPC., seeking ad interim order of temporary injunction restraining the defendants, their agents, servants, relatives or any body on their behalf from interfering with the peaceful possession and enjoyment of the suit schedule property unnecessarily causing interference and obstruction by removing the 9 feet road which towards western side of Re.Sy.no. 102/1, 102/2 and 102/3 leads north south: from Bijjihalli to Gollarahatti till disposal of the suit.

2. In support of the above application the plaintiff has filed affidavit and contended that the plaintiff no.5 and other plaintiff have jointly filed this suit against the defendants for the relief of permanent injunction. The suit schedule property is the road, which is existed towards western side of Re. sy.no. 102/1, 102/2 and 102/3 of Bijjihalli village, Sira Taluk which leads from Bijjihally to Gollarahatti. The said road is passed through various survey numbers since time immemorial. The plaintiffs and the



villagers are using the road to reach their agricultural land and carry out the agriculture operations. The defendant no.1 and 2 are the husband and wife and they have no manner of right, title, interest or possession over the 9 feet road and causing interference and obstruction for the peaceful possession and enjoyment of the said road and trying to cultivate the said road. When the plaintiffs and other villagers tried to repair the said road, by putting the boulders, the defendant no.1 and 2 caused obstruction for the repair work. The defendants are very powerful and influential persons and having men and money in their hands, supported by roudi elements people. Without an order from this court as prayed in IA No.1, the high handed acts of the defendants can not be restrained. Accordingly, prayed to allow the application.

3. After service of suit summons the defendants have put their appearance and filed written statement and objections to the above application denying the contentions of the plaintiff. In the written statement as well as in the objection statement the defendants have taken similar contention. It is stated in the written statement the defendants have contended that the father of the defendant no.1 had purchased the sy.no.102/1b measuring to an extent of 30 guntas from his vendor by name T.Mallegowda. After



purchasing of the land, the father of the defendant no.1 had given representation for conversion to construct a residential house.

4. He further contended that the defendant no.2 has purchased the property bearing sy.no.102/16 to an extent of 2 acres 35 guntas of land from its vendor by name B.M Manjunatha Gowda for a valuable consideration. The sale deeds, revenue documents and conversion documents and other revenue sketch which are also clearly speaks that the father of the defendant no.1 or his vendors or defendant no.2 or her vendors have not given any portion of land or space to the plaintiffs or to their elders or public to make road in the above said lands. All the documents and the village map are also clearly speak that there is no road is existing in the defendants land bearing sy.no.102/1B and 102/16. The father of the defendant no.1 after conversion, has constructed a dwelling house and erected stones slabs on western and southern side of the dwelling house and raised the coconut and areca nut trees about 35-40 years back.

5. It is further contended that that one of the permissive road is existing in land bearing old sy.no.103 and new re phoded sy.no.103/5. Though the said permissive road



is existing in land bearing sy.no.103/5. The purchaser by name B.R. Govindappa and Siddappa @ B.H. Siddaiah and others by colluded with other and concealed the said permissive road and got created a sale deed dated: 27-09-2021 by showing the northern side boundary as Gollarahatti road and they the purchaser of the same was tried to erect the stone slabs to block the said road and tried to remove the stones slabs erected by the defendants on the southern side of their land. The plaintiffs have filed this suit by suppressing the real facts. The plaintiff has no prima-facie case, the balance of convenience also lies in favour of the defendant. Accordingly, prayed for dismissal of I.A. No.I.

6. Heard both sides and perused the documents filed by the plaintiff and defendants.

7. On the basis of application and objection the points that arise for consideration of this court are:

: POINTS :

1. Whether the plaintiffs have made out prima facie case in his favour?
2. Whether the plaintiffs show that balance of convenience lies in their favour?
3. Whether the plaintiffs further show that



irreparable loss and injury will be caused to them, if an order of temporary injunction is not granted?

4. What order?

8. This court answers the above points as follows:

Point No.1 : In the Negative

Point No.2 & 3 : Does not survive for consideration

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

: REASONS :

9. **POINT No.1:** The plaintiff has filed this suit for grant of permanent injunction restraining the defendants, restraining the defendants, their agents, servants, relatives or any body on their behalf from interfering with the peaceful possession and enjoyment of the suit schedule property unnecessarily causing interference and obstruction by removing the 9 feet road which towards western side of Re.Sy.no. 102/1, 102/2 and 102/3 leads north south: from Bijjhalli to Gollarahatti till disposal of the suit.

10. The case of the plaintiffs is that they have



purchased the land bearing re.sy.no.102/2 and constructed the residential house in the said land. The plaintiffs and other villagers of Gollarahatti and Bijjihally make use of the road, since time immemorial. The defendants are making obstructing to use the road. . To substantiate the above fact the plaintiffs have produced the Sale deed, Tax paid receipts, photographs, Adhara cards, RTC extracts. Relying on the above documents the plaintiff contended that the suit schedule property is the road and existed towards western side of their land.

11. On the other hand the defendants have produced the RTC extracts, copy of the registered sale deeds, encumbrance certificate, Mutation extracts, Survey record, alienation order copy, village map photographs and CD.

12. The documents produced by the plaintiffs and defendants it discloses that the plaintiffs have claiming a road passes through the property of the defendants. The defendants have produced the village map to disclose that there was no road was situated towards the property of the defendants.

13. Prima facie case means the plaintiff must, by



making positive averments, assert that he has a strong case and a legal right to the property in suit, which has to be preserved and protected. It is not necessary for the plaintiff to prove by evidence. But, at least he must show that he has a strong prima facie case and there is every chance of his success in the case. Existence of prima facie case is *sine qua non* for the issuance of an interim injunction, provided the two other conditions namely, balance of convenience and irreparable injury are satisfied. Prima facie case does not mean prima facie title. Prima facie case exists whenever there are issues which need trial and adjudication. Necessary criteria for establishing a prima facie case is that the plaintiff has to show that he has bonafidely raised a substantial question which needs to be adjudicated at the trial of suit.

14. In the case of Gujarat Bottling Co. Ltd. v. Coca Cola Co. reported in [(1995) 5 SCC 545] this Court, while discussing the factors to be considered by the Courts in exercise of the discretion under order 39 rules 1 & 2 CPC, has observed as follows:

"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court



applies the following tests (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies.



In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

15. The plaintiff has produced sale deed wherein there was recital of road measuring to an extent of 9 feet. The plaintiffs have not produced any revenue documents to show the existence of the road. Without the revenue documents, at this stage the contention of the plaintiff that the existence of the road is not acceptable at this stage. Further, the plaintiffs have mentioned the same boundary shown in their sale deed. Except, photographs and RTC extracts, at this stage the court cannot come to the conclusion that there was a road which exist towards western side and same is passes through the property of the defendants. As the plaintiff has failed to establish existence of the road at this stage it cannot be taken into consideration that the defendants are interfering with the possession and enjoyment of the suit schedule property by the plaintiff. On considering the above aspects this court is of the opinion that the plaintiff has failed to make out a prima-facie case in his favour. Accordingly, this court answers the



point No.1 in the Negative.

16. Point No. 2 and 3: As the plaintiff has failed to establish prima facie case in his favour there is no question of considering the aspect of balance of convenience as well as irreparable loss or injury to be caused to the plaintiff. Hence, the Point No.2 and 3 does not survive for consideration.

17. Point No.4: For the discussion made above this court is the opinion that the plaintiff is not entitle to the relief claimed in the IA No.I and the same requires to be rejected. Hence, this court proceeds to pass the following:

O R D E R

The I.A.No.-I filed by the plaintiffs
under Order 39 Rule 1 and 2 r/w 151 of
CPC., is hereby rejected.

(Dictated to the Stenographer directly on computer, typed by her,
revised, corrected and then pronounced in the open Court, on this
18th July 2023)

Sd/-
(SANDEESH T.L.)
Prl. Civil Judge & JMFC.,
Sira