

KAUK030002202020



IN THE COURT OF THE ADDITIONAL CIVIL JUDGE & J.M.F.C-II.,
AT: KARWAR

PRESENT: ***Smt. Akshatha C.R.***
B.B.A., L.L.B.(Hons.)

Addl.Civil Judge & J.M.F.C-II of Karwar

ORIGINAL SUIT NO. 42/2020

Dated: 29th Day of June 2024.

Plaintiff/s : Sri. Bhavana Nitin Patil and others
(By Sri. H.S.S., Adv.)

V/s.

Defendant/s : Smt. Vijaya Ramkrishna Babrekar
(By Sri. G.T.N., Adv.)

I.A. No.I

Applicant/s : Sri. Bhavana Nitin Patil and others
(By Sri. H.S.S., Adv.)

V/s.

Opponent/s : Smt. Vijaya Ramkrishna Babrekar
(By Sri. G.T.N., Adv.)

-.: ORDERS ON I.A.NO.I :-

1. The plaintiffs have moved this interlocutory application U/O. XXXIX Rule 1 and 2 R/w Section 151 of C.P.C. seeking to restrain the defendant, their men, agents, servants or any person acting on their behalf from obstructing the from obstructing the passage which is used by the plaintiffs for their ingress and egress to the suit schedule properties as shown in the site plan annexed to the plaint till the disposal of the suit.

2. In the affidavit enclosed to the application it is stated that plaintiffs have filed this suit seeking the relief of declaration and permanent injunction against the defendant since she is obstructing them in using the pathway which approaches the suit schedule property. That they are enjoying the suit schedule property without any hindrance and interruption from anybody. It is stated that defendant is creating nuisance by obstructing the plaintiffs by dumping stones, garbage and other things on

the passage which is used by the plaintiffs. That the conduct of the defendant is such that it has driven the plaintiffs to file complaint against her before the concerned authority. Nevertheless, defendant fails to stop her unwanted activity. Thus it is just and necessary to restrain the defendant and persons claiming under her from obstructing the passage or road which is used by the plaintiffs for their ingress and egress to the suit schedule properties. They state that they have got a prima facie case and balance of convenience lies in his favour and that they will be suffer irreparable loss which cannot be compensated in terms of money. In this regard, plaintiffs sought to allow their application.

3. Per contra, defendant assailed the case of the plaintiffs on the grounds that there is no such passage as alleged in the plaint. Defendant denies the each and every averment of the plaint. It is further contended that the defendant is not aware of the fact that plaintiffs have purchased Sy.No.283/1B/2, Sy.No.283/3 and Sy.No.283/1

from its erstwhile owner. Defendant stoutly denies the assertion of the plaintiffs that prior to the registration of the sale deeds in their favour, erstwhile owner had entered into an agreement to sell and in the said agreement it is mentioned that plaintiffs have right to use the passage (ಕಾಲುದಾರಿ). Further she dissents from the averments of the para No.4 of the plaint that plaintiff No.1 was using three feet pathway shown in the site plan to access to her property and the entire building materials were transported to the suit scheduled property via the alleged pathway. She repudiates the case of the plaintiffs at its entirety.

4. Heard the respective counsel for the parties.
Perused the materials placed fore of this Court.

5. In view of the same the following points arise for the consideration of this Court.

1. Whether the plaintiffs have made out a prima facie case?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether dismissal of the instant application would cause irreparable damage or injury to the plaintiffs?

4. What order?

6. My answer to 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 the final order
for the following.

REASONS

7. Point No.1 to 3: Since these points are interlinked and connected with each other they are taken for common discussion for the sake of brevity.

The plaintiffs have moved the present interlocutory application seeking to restrain the defendant from obstructing the suit pathway which they have been using to approach their respective properties. It is the allegation of the plaintiffs that defendant is disturbing them in using the said pathway by dumping stones, garbage and other things on the passage and thereby the defendant is

creating nuisance by obstructing them. They further assert that the conduct of the defendant is such that plaintiffs have to file the complaint against the defendant before the concerned authority. Nevertheless she failed to abstain herself from doing unwanted activity. Conversely, defendant contended that she is not acquainted with the fact that plaintiffs have purchased Sy.No.283/1B/2, Sy.No.283/3 and Sy.No.283/1B2 from its erstwhile owner. She further denied that plaintiffs have been accrued right to use the said passage by virtue of agreement of sale executed by the erstwhile owner in their favour since it was mentioned in the said agreement that plaintiffs have right to use the passage. She contends that there is no such passage as averred in the plaint and she denies that she has interfered and obstructed the pathway as alleged in the plaint. She further contends that plaintiff have not demonstrated prima facie case, balance of convenience and irreparable loss which are essential to grant the relief of temporary injunction. Hence present I.A. may be dismissed.

8. The plaintiffs in support of their case have produced copy of the representation given to the Commissioner dated 06.07.2019, copy of the representation made to Rural Police Station, Karwar, copy of the acknowledgment issued by Rural Police, Karwar, copy of Sale Agreement, copy of the Sale Deeds in favour of the plaintiffs, copy of the house allotment and work order letter in favour of the plaintiffs and two photographs. However the defendant has not placed any document on record.

9. It is the assertion of the plaintiffs that the erstwhile owner of the lands which they have purchased has clearly mentioned in Agreement of Sale that they have a right to use pathway running from north to south from the land bearing Sy.No.283/1B/1 which she had sold in favour of one Smt. Vijaya Ramakrishna Babrekar i.e., the defendant herein and land bearing Sy.No.283/1A/1. I have scrupulously gone through the Agreement of Sale. It is true

that it is mentioned so in the said Agreement. However it is pertinent here to take note of the fact that said Agreement is not executed on the Non- Judicial Stamp Paper. It is barely written on the white sheet. Besides the aforesaid fact is not mentioned in the Sale Deeds said to have been executed by the erstwhile owner in favour of the plaintiffs herein though it is mentioned as such in the said Agreement. Such being the case it is quite difficult to come to any conclusion in that regard.

10. An easement is the right to use another person's land for a stated purpose. It can involve a general or specific portion of the property. The landowner who grants an easement usually cannot build structures within an easement area or use fencing that would hinder access. Sale is a transfer of ownership. Ownership is absolute interest in the property. Therefore, in a sale there is transfer of all the rights in the property sold; no rights in respect of property are left with the transferor (seller). Ownership means bundle of all the rights and liabilities of

property. So when the ownership is transferred, there is transfer of all the rights in property by transferor to transferee. In other words, nothing less than ownership or absolute interest may be transferred by way of sale.

11. It is indispensible to note at this juncture that plaintiffs have averred in their pleadings that they are unable to ingress and egress to their property and unable to reside in the said properties. It appears that plaintiffs have no alternative way to approach their respective lands except the alleged pathway. Whether such a pathway is in existence or not? Is a matter of trial and conclusion in that regard can be arrived upon only after full-fledged trial. It is quite clear by the documents placed by the plaintiffs on record that they are the owners of the respective lands bearing Sy.Nos.283/1B/2, 283/3 and 283/1B2. Is there any alternative way for the plaintiffs to reach their respective lands apart from the pathway in question? And whether these plaintiffs have right to use the said pathway or not? are the issues involved in the case and as stated

supra conclusion in that regard can be arrived only after trial. At this stage, only by considering the pleadings and documents submitted by the parties, one cannot decide the crux of the case. This Court opines that at one stretch plaintiffs cannot be stopped from using said pathway especially when the other side have not produced documents in support of their case. If the relief claimed by the plaintiffs is not granted at this stage, then their properties will be land-locked and they will not be in a position to approach their respective lands. Hence, in order avoid any sort of difficulty this Court is inclined to grant the relief claimed by the plaintiffs till the disposal of the suit.

12. 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. An Injunction is an equitable remedy which is “a judicial process that compels

a party to refrain from doing or to do a particular act or thing". Granting of temporary injunction is not a matter of right, but the petitioner has to satisfy the essential ingredients as required Under Order 39 Rule 1 CPC.

13. The Hon'ble High Court of Karnataka in **Bank of Baroda v. Dr. Bavaguthu Raghuram Shetty, & ORS.** in COMAP NOs. 27 OF 2020 AND 28 OF 2020 observed thus:

"28. Simultaneously if we consider the provisions contained in Order 39 Rule 1(b), of the Civil Procedure Code we find that while passing an order of injunction, the Court is not required to find out as to whether there is every possibility of passing a decree in favour of the plaintiff in the suit. While considering the application for temporary injunction, the Court is only required to ascertain as to whether a prima facie case has been made out by the plaintiff in the suit. Prima facie case means an arguable case meaning thereby that a reasonable dispute is raised before the Court which the Court is required to resolve ultimately in the suit. A prima facie case is distinguishable from a full-proof case."

Hence, for the foregoing discussion and reasons, this Court answers point No.1 to 3 in the **Affirmative.**

14. Point No.4: In light of answering point No.1 to 3 as aforementioned, this Court proceeds to pass the following.

:-ORDER:-

I.A. filed by the plaintiffs U/O. XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby allowed.

Accordingly the defendant, her men, agents, servants or anybody claiming under her are hereby restrained from obstructing the passage which is being used by the plaintiffs for their ingress and egress to their respective lands shown in the site plan annexed to the plaint.

Costs are made easy.

(Typed by me on my laptop, corrected, signed by me and then pronounced the Order in the open Court on this the **29th day of June 2024**)

Smt. Akshatha C.R.
Addl. Civil Judge & JMFC-II,
Karwar.