

KAUK210000422024



**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C. ANKOLA**

**PRESENT**

**Smt. Arpitha B Bellad.**

B.Com., LL.B.,  
Addl., Civil Judge and J.M.F.C.,  
Ankola.

**ORIGINAL SUIT NO.4/2024**

Dated this the 25<sup>th</sup> day of April, 2025

**Plaintiffs :-**

1. Ramachandra Devu Naik,  
Aged about 70 years,  
O/c: Pensioner and Agriculturist,  
R/o: Somanahalli, Chipagi, Tq.Sirsi.
2. Shantaram Devu Naik,  
Aged about 61 years,  
O/c: Pensioner and Agriculturist,  
R/o: Banavasi road, Hanchanakeri,  
Po: Bachagaonv, Tq.Sirsi.

**[By Sri. M.P.B., Advocate]**

V/s

**Defendants:-**

1. Shivanand Devu Naik,  
Aged about : 73 years,  
O/c: Pensioner and Agriculturist,  
R/o Tenkanakeri, Tq.Ankola.
2. Smt. Neela W/o Ramachandra Naik @ Neela  
S/o Devu Naik,  
Aged about : 65 years,  
O/c: Household,  
R/o Tenkanakeri, Tq.Ankola.

3. Smt. Kamala W/o Rama Naik @ Kamala  
S/o Devu Naik,  
Aged about : 63 years,  
O/c: Household,  
R/o Belambar, Tq.Ankola.
4. Smt. Shivamma W/o Narayan Naik  
Aged about : 80 years,  
O/c: Household,  
R/o Near Bommayya Temple, Tenkanakeri,  
Tq.Ankola.
5. Sri. Srinivas Narayan Naik,  
Aged about : 55 years,  
O/c: Employee,  
R/o Near Bommayya Temple, Tenkanakeri,  
Tq.Ankola.
6. Smt. Malati W/o Sripad Naik ,  
Aged about : 53 years,  
O/c: Household,  
R/o Bobruvada, Near Kannada School,  
Tq.Ankola.
7. Smt. Sulochana Narayan Naik  
Aged about : 50 years,  
O/c: Household,  
R/o Tenkanakeri, Tq.Ankola.
8. Miss Sindhu Datta D/o Anandu Naik,  
Aged about : 19 years,  
O/c: Student,  
R/o Near Bobruwada school, Tq.Ankola.
9. Smt. Pushpa W/o Janardhan Naik,  
Aged about : 50 years,  
O/c: Household,  
R/o Near Vyavasaya Seva Sahakari Sangha  
Society, Kagal, Tq.Kumta

10. Smt. Vijaya W/o Ramachandra Naik,  
Aged about : 48 years,  
O/c: Household,  
R/o Matakeri, Tq. Ankola
11. Smt. Lata W/o Maruti Naik,  
Aged about : 46 years,  
O/c: Household,  
R/o Near Petrol Pump, Alvekudi, Tq. Kumta
12. Smt. Shobha W/o Aravind Naik,  
Aged about : 44 years,  
O/c: Household,  
R/o Tenkanakeri, Tq. Ankola
13. Smt. Mahalakshmi W/o Arun Naik,  
Aged about : 42 years,  
O/c: Household,  
R/o Gudigaragalli, Tq. Ankola

**[D1 By Sri. R.N.H.-Advocate ]**  
**[D2 & 3 -In person]**  
**[D4 to 8 By Sri. G.N.N.-Advocate ]**  
**[D9 to 13 Exparte]**

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### **ORDERS ON IA No. III**

This is an application filed by the defendant No.1 under Order XXXIX Rules 1 & 2 of CPC praying to pass interim mandatory injunction against the plaintiff No.1 directing him to vacate the areca nut trees grown in 12 feet road in Sl.No.8 and 9 of the suit properties causing obstruction for the defendant No.1 for his ingress and outgress.

**2.** The said application is accompanied with an affidavit of defendant No.1 wherein he stated that his mother Taki Devu Naik relinquished an area to an extent of 0-4-0 out of 0-20-0 in Sl.No.8 of the property on 16/01/2007 in his favour before the Notary by way of an affidavit for the purpose of construction of his house and on the strength of the said affidavit, he has been residing in the said property by developing and constructing his house bearing No.175 of Gram Panchayat, Bobruvada by spending huge amount and he and his ancestors from last 25 years have been using the 12 feet road passing through the Tenkankeri-Belambar main road towards eastern direction in order to reach their home and have been enjoying the 30 feet road from eastern side towards western side in 12 feet road. But on 10/09/2024 plaintiff No.1 has dug a pit of arecanut tress and planted small saplings on the road which they are using thereby causing obstruction for them from taking vehicles and for their ingress and outgress. It is further stated that daughter of his brother aged about 6 years used to pass through the said road from her school and his grand daughter fell into the pothole. The plaintiff No.1 with an intention to cause trouble to them for their ingress and outgress has planted the saplings of arecanut tress by digging the pit in the road passing through the Sl.No.8 and 9 of the suit schedule properties and the plaintiff No.1 has no right to do so since the partition has not yet taken place. Hence, prays to dismiss the said application.

**3.** Per contra objections came to be filed on behalf of plaintiffs refuting the said application as not maintainable by contending that the case is posted for the evidence of the plaintiff and defendant No.1 only with a malafide intention to drag the matter has filed this kind of frivolous application. The existence of 12 feet road towards eastern side in Sl.No.8 of the suit property is denied by stating the the said land is bhagayat land wherein various trees are grown and also the plaintiff No.1 owns a separate residential house and the house of the defendant No.1 is situated towards western side of the said property and there exists a wicket gate for ingress and outgress from time immemorial and accordingly the defendant No.1 reaches to the public road from the said wicket gate and this arrangement is available from time immemorial. The existence of 12 feet road in SL.No.8 of the suit property is denied and further stated that there exists 3 wells, residential houses of plaintiff and defendant No.1 and a shed towards northern side. It is further contended that plaintiff No.1 has made 2.50 feet gate for his ingress and outgress towards eastern side of his house. Prior to this, there was no any wicket gate or gate and no road was also in existence. The property of one Venkatraman Balakrishna Kamat is situated towards eastern side of the suit property and the said property was purchased by the plaintiff No.1 afterwhich he has constructed a road in the said property but there was no any road from time immemorial and defendant No.1 has never used the said road fro his ingress and outgress, as such the defendant No.1 cannot claim the right of 12 feet road, under such

circumstances mandatory injunction cannot be granted and further denied rest of the contents of the affidavit of defendant No.1. On all these grounds, prays to dismiss the said application.

4. To decide this IA, the following points arise for the consideration of this Court :-

### **POINTS**

**1. Whether the defendant No.1 has made out a prima facie case?**

**2. Whether the balance of convenience lies in his favour?**

**3. Whether the defendant No.1 suffers from irreparable damage if TI is not granted?**

5. Perused all the available materials on record. Heard both the sides.

6. Having done so, the answers to the aforesaid points are as hereunder:-

**Point No.1 : In the Negative**

**Point No.2 : In the Negative**

**Point No.3 : In the Negative**

### **REASONS**

7. **Point No.1** :- While considering an application for injunction, it is well-settled that the courts would pass an order

thereupon having regard to: (i) Prima facie (ii)Balance of convenience (iii) Irreparable injury. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. Prima facie case means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. "Prima facie case" is a substantial question raised bonafide which needs investigation and a decision on merits. If a fair question is raised for determination, it should be taken that a prima facie case is established. The real thing to be seen is that the Plaintiff's claim is not frivolous or vexatious.

**8.** By keeping the above principles in mind, before going to discuss the facts and circumstances of the case, the relevant provision in respect of granting temporary injunction is extracted hereunder for better understanding -

Order XXXIX Rule 1 of CPC provides that where in any suit it is proved by affidavit or otherwise -(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 3[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further Orders.

**9.** Admittedly, the present suit is instituted by the plaintiffs against the defendants seeking the relief of partition and separate possession of their 1/5th share each over the suit schedule properties on the ground that the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 3. The only contention raised by the defendant No.1 is that his mother Taki Devu Naik had relinquished her right infavour of this defendant to an extent of 0-4-0 out of 0-20-0 towards western side in Sl.No.8 of the suit schedule property by

way of an affidavit before the notary and he has developed the said area by spending huge amount and constructed the house wherein he and his family members have been residing there and he has also sought for 12 feet road from east towards west passing from Sl.No.9 of the suit property for his ingress and outgress to reach his house situated in Sl.No.8 of the suit property and also sought for his 1/5th share and to allot an area of 0-4-0 in Sl.No.8 of the suit property.

**10.** The present application is moved by defendant No.1 seeking interim mandatory injunction against plaintiff No.1 directing him to vacate 12 feet road by removing the areca nut trees and saplings grown on the said road which causing obstruction to the defendant No.1 and his family for their ingress and outgress.

**11.** On going through the pleadings of the plaintiffs and defendant No.1, the relationship of the parties and the nature of the properties are not under dispute. The defendant No.1 has also sought for his 1/5th share over the suit schedule properties. Now the defendant No.1 moved the present application seeking interim mandatory injunction against the plaintiff No.1 in respect of 12 feet road passing through Sl.No.9 of the suit property to reach his home situated at Sl.No.8 of the suit schedule property. The contention of the defendant No.1 is that his mother has relinquished to an extent of 0-4-0 out of 0-20-0 in Sl.No.8 of the suit property in his favour by way of an affidavit before the

notary. It means that it was not a registered relinquishment deed since he himself has admitted in his pleadings that his mother relinquished her right over the said area by way of an affidavit before the notary and not by virtue of registered relinquishment deed. It is well settled that any instrument affecting immovable property shall be registered as per mandate section of 17 of Registration Act. No right, interest or title is said to be passed in the absence of the registered document. At this stage, this Court deems it fit to take note of Sections 17 and 49 of the Registration Act, 1908, which is reproduced hereinbelow:-

"17. Documents of which registration is compulsory.--

(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:--

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

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**12.** Section 49 of the Registration Act, 1908 reads as under:-

"49. Effect of non-registration of documents required to be registered.--No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall--

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: 1[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) [\*\*\*] or as evidence of any collateral transaction not required to be effected by registered instrument.]..."

**13.** Perusal of aforesaid Section 17 clearly suggests that document/instrument, which intends/purports to create right/title to an immovable property having value of Rs. 100/- should be registered. Similarly, perusal of Section 49 of the Act suggests that documents, which are required to be registered under Section 17 shall not affect any immovable property; comprised therein or confer any power to adopt or to receive any evidence to any transaction affecting the said property or conferring power unless it has been registered.

**14.** Hence on going through the above said provisions, in the absence of any unregistered instrument, no right, interest or title passes to the defendant No.1 by a mere affidavit executed before the notary. The defendant No.1 on the strength of notarized affidavit claiming a right over an area of 0-4-0 out of 0-20-0 in Sl.No.8 of the suit property and also sought for 12 feet road from

east towards west from Sl.No.9 of the suit property to reach his house situated in Sl.No.8 of the suit property. However the plaintiffs have denied the existence of 12 feet road as claimed by the defendant No.1. Under such circumstances, the defendant No.1 in order to get an injunction must prima facie show the existence of 12 feet road in Sl.No.8 and 9 of the suit schedule properties but for the best reasons known to the defendant No.1, not an iota of document is produced before the Court to show the existence of 12 feet road in the above said properties. It is also trite to know that the defendant No.1 has sought for interim mandatory injunction alleging that plaintiff No.1 has planted the saplings and grown trees over the 12 feet road causing obstruction to defendant No.1 for his ingress and egress. No doubt there is no prohibition in granting interim mandatory injunction but it is to be granted not at the asking of the parties but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. But in the instant case on hand, admittedly the defendant No.1 has not shown at least prima facie existence of 12 feet road over the Sl.No.8 and 9 of the suit schedule properties. When the defendant No.1 fails to show his prima facie case regarding existence of 12 feet road, under such circumstances, no compelling grounds are forthcoming to grant an interim mandatory injunction against the plaintiffs who have grown the trees and planted saplings. The defendant No.1 before seeking such a relief by way of interim mandatory injunction must first prima facie show his right over the said area. The party,

seeking the aid of the Court for an injunction must show that the act complained of is in violation of his right or is at least an act which, if carried into effect, will necessarily result in a violation of the right which the defendant No.1 failed to prima facie establish the existence of 12 feet road in Sl.No.8 and 9 of the suit properties and his right over the said road.

**15.** Another point which is relevant to consider here is that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his rights in a suit or any other proceeding. But in the present case on hand, the defendant No.1 has sought for granting of interim mandatory injunction without seeking the main relief for the same in his prayer, under such circumstances an interim relief of mandatory injunction also cannot be granted by this Court. All these circumstances go against the defendant No.1 which would disentitle him from getting a temporary injunction. According to my opinion, prima facie case has not been made out by the defendant No.1.

**16.** In **Sri Gowrishankara Swamigalu vs Sri Siddhaganga Mutt** reported in **ILR 1989 KAR 1701**, the Karnataka High Court dealt with the co- existence of all the three pillars for grant of temporary injunction.

The Court held thus:

“ I need hardly add the existence of a prima facie case in these matters of granting injunction is really the

harbinger or the all 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. But if there was a prima facie case then other considerations governing the grant of injunction would come in to play and will also have to be evaluated before granting or refusing the injunction.

In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between

It is no more Res Integra that when all the above three conditions/factors/tests/pillars exist simultaneously, the Court would be under a bounden duty to grant temporary injunction to meet the ends of justice. When even one of the aforesaid tests are not met out, the Court would not be legally justified in granting temporary injunction.”

**17.** When the plaintiff has failed to prove prima facie case, then it is not necessary to discuss in detail regarding balance of convenience and irreparable injury.

**18. Point No.4 :** For the above discussed reasons, **this court proceeds to pass the following -**

**::ORDER::**

**I.A.No. III filed by the defendant No.1 under Order XXXIX Rule 1 and 2 is hereby dismissed.**

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations. of this order during the course of trial or for any other purposes.

(Typed and prepared by me, directly on computer then corrected by me and then pronounced by me in the open court on this the 25<sup>th</sup> day of April 2025)

**(Arpitha B Bellad)**  
**C/c Civil Judge and J.M.F.C.,**  
**Ankola.**

**(Order Pronounced by in the open court vide separate order)**

**ORDER**

**I.A.No. III filed by the defendant No.1 under Order XXXIX Rule 1 and 2 is hereby dismissed.**

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations. of this order during the course of trial or for any other purposes.

**C/c Civil Judge and J.M.F.C.,  
Ankola.**

