

KAUK310035542022



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
J.M.F.C., BHATKAL**

Dated this 3rd day of November 2022

PRESENT : SRI. FAWAZ P.A., B.A., LL.B.

Addl. Civil Judge and J.M.F.C., Bhatkal

O.S.No.74/2022

Plaintiff :

Nirmala W/o Murdeshra Naik,
Aged about : 50 years,
R/o: Chandrahitlu, Mavalli-2 Village,
Murdeshwar, Bhatkal Taluk,
Uttara Kannada District.

(By Sri. S.M.N., Advocate)

V/s

Defendants :

1. Shankar Narayan Bhatrahitlu,
Aged about : 35 years,
R/o: Near Isha Residency,
Gardigadde Cross, Mavalli-2 Village,
Murdeshwar, Bhatkal Taluk,
Uttara Kannada District
2. Umesh Ganapati Kerekatte,
Mavalli-2, Murdeshwar,

Aged about : 48 years,
R/o: Kerekatte, Mavalli-2 Village,

3. Ashok Poojari S/o Manjunath Poojari
Aged about : 35 years,
R/o: Kannadashale, Mavalli-2 Village,
Murdeshwar, Bhatkal Taluk,
Uttara Kannada District.

(By Sri. S.B.Bomma, Advocate)

Parties to the I.A.No.II :

Applicant : Shankar Narayan Bhatrahitlu,

V/s

Respondent : Umesh Ganapati Kerekatte and 2 others

ORDERS ON I.A.NO.II

Order on I.A.No.2 filed U/O.XXXIX Rule 1 and 2
by the Plaintiff.

2. The nutshell of the Plaintiffs suit is that;

The Plaintiff is the owner of Sy. No.80 Hissa
1measuring 0-9-0 of land situated at Mavalli Village of
Bhatkal Taluk. The Plaintiff submitted that, their exist
a pathway measuring width of 10 feet in the suit
schedule property. The Plaintiff used said pathway for
her ingress and agress to reach the public road. The
Plaintiff further submitted that, the said pathway in
the only way to reach the public road. They have

being using said pathway as prescriptive right. The suit schedule property was earlier belonging to one Juje Tellies and his family members. The Defendant No.1 retained 0-2-0 of land in Sy.No.76A/1 for the purpose of road to reach the adjoining land belonging to the Plaintiff and her family members. At the time of purchase of the land by the Defendant No.2, he agreed to leave 12 feet width land for the construction of the road starting from the 0-2-0 of land which was left by the Defendant No.1. The Plaintiff further submitted that, there is no any agricultural land bearing Sy.No.76/B in the south western corner of the Plaintiff's land. The Plaintiff further submitted that, the Defendants Surveyed said land and the boundary stones were installed. Said Survey was conducted without informing the Plaintiff. The Defendant No.1 and 2 have put the boundary stones in the Plaintiff's land by encroaching 15 feet on the Western side. The Defendants forcibly and highhandedly installed said boundary stones. The Plaintiff further submitted that, the Defendants dug the foundation across the said pathway, in order to put up a Compound Wall, and to block the said pathway which is situated in the suit schedule property. The Defendants have already stored building materials. The Defendants filled mud in the pathway with an intention to stop or block or

obstruct the pathway of the Plaintiff with the help of JCB. That on 04/09/2022 at 10.00 AM, the Defendant No.2 and 3, while digging foundation in the suit land, the Plaintiff requested to stop their work. But Defendants were not ready to heed the request of the Plaintiff. They threatened the Plaintiff that they will block the pathway permanently. Henceforth, the Plaintiff filed this suit praying before this court to pass an order of injunction against the Defendants.

3. The Defendants filed written statement and the Defendant No.1 and 2 adopts the same by filing memo. The Defendants denied the Plaintiff's averments. The Defendants submitted that, the prayer of the Plaintiff is unidentified hence easementary right cannot be prayed. The Defendants further submitted that, Survey No.78A/1 measuring 0-33-0 of land in Mavalli-II Village of Bhatkal Taluk was compact block and it is a paddy-field since many years. It was kept vacant. The Defendant No.1 purchased the same from its erstwhile owner in the year 2009. The Survey boundary of the said land are specifically mentioned in the sale deed. As per the said sale deed, there was no any pathway situated in the suit land. The Defendant no.2 and 3 purchased a portion from the Defendant No.1 in the year 2021. As such the Hissa No.4 was purchased by the Defendant No.2 and Hissa No.5 was

purchased by the Defendant No.3. The remaining portion of the property was sold to Gopal Manjappa Naik. The Defendants further submitted that, on the Northern side of Sy.No. 74, there exist a panchayat road starting from beach road, in order to reach the Plaintiff's land. Apart from the said road there is another road called as Church road. They further submitted that, on the Eastern side of the suit land there is a bund measuring about 8 feet in height and same has been in existence till today. The Plaintiff's house is situated after the said bund. Henceforth, they submitted that, there is no any pathway situated in the suit schedule property. The Plaintiff does not have any right title and interest over the suit schedule property. Henceforth, the Defendants prayed to dismiss the suit.

4. The Plaintiff filed this application retreating the Plaintiff averments and the Defendants filed their objections retreating the written statement.

5. Heard both the sides. The learned counsel for the Plaintiff filed 26 documents and a citation in support of her suit. The Defendants filed two list of documents and thirteen documents. Henceforth they prayed to dismiss the application.

6. On perusal of the materials placed on record, following points arise for my consideration;

Point No.1 : Whether Plaintiff has made out a prima-facie case against the Defendants?

Point No.2 : Whether the Plaintiff has made out, balance of convenience lies in her favour?

Point No.3 : Whether Plaintiff has made out grounds to prove that in case, if injunction is not granted, she may suffer with irreparable loss, which cannot be compensated in terms of money?

Point No.4 : What Order?

7. My findings on the above points are as follows;

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

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

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

Point No.4 : **As per final Order,
for the following:-**

REASONS

8. **Point No. 1 to 3** : The Plaintiff filed the suit for the relief of injunction against the Defendants. The suit of the Plaintiff is that, she is the owner of Sy.No.80/1 which is adjacent to the suit schedule property. She submitted that, there is a 10 feet footpath, existing in suit schedule property from time

immemorial which is the only way to ingress and egress to beach road from the Plaintiff's land. The Defendants on 04/09/2022, was digging suit land for foundation, the Plaintiff requested the Defendants not to dig for foundation across the said pathway and block the Plaintiff from using the said pathway. Henceforth, the Plaintiff filed this suit.

9. The Defendants filed their written statement and denied the Plaintiff's averments. The Defendants submitted that, there is no any pathway in the suit schedule property. There is a bund of 8 feet height at the Eastern edge of the suit schedule property. The Plaintiff's property and the house is situated on the other end of said bund. Henceforth, the Plaintiff cannot seek for any injunction. Thereby the Defendants prayed to dismiss the suit.

10. The Plaintiff filed this application by retreating the Plaintiff's averments in her application and prayed to pass an order of temporary injunction against the Defendants. The Defendants filed common objections and written statement and also hand sketch. The Defendants submitted that, there is no any pathway existing in the suit schedule property. The Plaintiff does not have any right in the suit schedule property. There are two approach roads from Northern and

Southern side to reach the suit schedule property. Henceforth, the Plaintiff does not have any right to seek an order of injunction submitting that, they have prescriptive right in the suit schedule property.

11. On perusal of entire materials placed on record, and as per admission of the Plaintiff, it is quiet understandable that, the Plaintiff is not the owner of the suit schedule property. The Plaintiff submitted that, there exist a pathway in the suit schedule property and it has been using from time immemorial.

12. In order to substantiate said arguments, the Plaintiff filed a Survey sketch and four photographs. Per-contra the learned counsel for the Defendant argued that, they have an approach road and it is quiet evident from the survey map produced by the Plaintiff. Hence, they cannot claim any prescriptive right in the suit schedule property.

13. It is to be noticed that, the photographs produced by the Plaintiff would show that, their exist a road in the Eastern edge of a land. The Plaintiff argued that, said land in nothing but the suit schedule property. The Defendants produced a photographs and submitted that, their exist a road in the Northern side as well as Southern side of the suit schedule property

to reach the Plaintiffs property from the beach road. On perusal of the Village map, it is quiet evident that, such road exist to reach Plaintiff's property. However, the Plaintiff has not sought for any decaratory relief. At this movement, I cannot declare that, the Plaintiff has right of pathway in the suit schedule property. Whereas, the Plaintiff's suit is that, their exist a pathway in the suit schedule property and it has been using from time immemorial for ingress and agrees to reach main road by the Plaintiff, said fact requires to be proved with co-gent materials evidences. It is is to noticed that, the Plaintiff has not made out a prima-facie case by producing any hand sketch nor by producing relevant sketch that shows their exist a pathway to reach her property.

14. The learned counsel for the Plaintiff relied upon a judgment reported in:

1) 2022(4) KCCR 3212.

The Plaintiff submitted that, existence of a pathway and it has been used by the Plaintiff is proved by the Plaintiff, then if relief not granted as prayed by the Plaintiff, the Plaintiffs property would be land locked.

15. Applying the facts of this case to the above citation, it is to be noticed that, there is no any hand

sketch nor survey sketch that shows, their exist a pathway and it is the only mean to reach the Plaintiff's property. In such circumstances, the hand sketch produced by the Defendants requires to be compared with Village Map produced by the Plaintiff. On perusal of the hand sketch produced by the Defendants and Village Map produced by the Plaintiff, a pathway does not exist in the suit schedule property. Whereas, there is a approach road to reach Plaintiff's property in the Northern and Southern side of the suit schedule property. In such circumstances, I don't find, the citation produced by the Plaintiff would be squarely harmfully applicable to the facts of the case. Because the land of the Plaintiff will not be land locked till the disposal of this suit. Henceforth, I answer **Point No.1 Negatively.**

16. In view of answering Point No.1 Negatively, and I don't find any prima-facie case has been made by the Plaintiff, there is no any balance of convenience that would lie in her favour and irreparable loss would be caused to her. Thereby, I answer. **Point No.2 and 3 Negatively.**

17. Point No.4:- In view of answering above points Negatively, I proceed to pass following:-

ORDER

**The application filed by the Plaintiff
U/Order. XXXIX Rule 1 and 2 of the C.P.C.,
as I.A No.II is hereby dismissed.**

No order as to cost.

(Dictated to the Stenographer, transcribed by him,
corrected and then pronounced by me in the open Court on
this 3rd day of November 2022.)

Sd/-

(Fawaz P. A.)

Addl. Civil Judge and
J.M.F.C. Bhatkal