

IN THE COURT OF THE CIVIL JUDGE, KARWAR.
AT: KARWAR.

PRESENT: ***Sri. Mahesh Chandrakanth,***
 B.A. LL.M
 Prl. Civil Judge, Karwar.

ORIGINAL SUIT NO: 165/2015

DATED: THIS THE 8th DAY OF AUGUST 2016

PLAINTIFF/S : Ratnakar Rama Naik
 Age: 68 years, Occu: Agril,
 R/o: Nakudha Mohalla,
 Sadashivgad, Karwar.

(By Sri.CDN & VAG, Adv)

V/s

DEFENDANT/S: Smt. Vimala W/o. Ramesh Naik
 Age: 45 years, Occu: Household,
 R/o: Nakudha Mohalla,
 Sadashivgad, Karwar.

(By Sri. PSB, Adv)

ORDERS ON I.A.NO.1 & 2

I.A.No.1 is filed by the plaintiff U/o. 39 Rule 1 & 2 R/w 151 of C.P.C., seeking ad-interim injunction restraining the defendant from creating/establishing a new pathway/road by encroaching the suit schedule property till disposal of the suit.

I.A.No.2 is filed by the defendant U/o. 39 Rule 1 & 2 R/w Sec.151 of CPC seeking ad-interim injunction against the plaintiff, restraining him obstructing from using 3 feet width pathway in the suit schedule property during the pendency of the suit.

2. In the accompanying affidavit the plaintiff has stated that he has purchased the suit schedule property through registered sale deed. From the date of purchase he and his family members are in possession and enjoyment of the suit schedule property. At the time of purchase there was no pathway or road to reach the property of the defendant from the suit schedule property. After purchasing the Sy.No. 129 hissa 2B2 the defendant claiming pathway in the suit schedule property. The defendant is trying to remove the fence of the suit schedule property from the Northern side and trying to create a new road by encroaching the suit land. Hence, prayed for allowing the application.

3. The defendant appeared through her advocate and filed her detailed objection to the I.A.No.1. She contended that her husband and plaintiff are the brothers. The plaintiff purchased the suit Sy. No. 130B an area of 10 gunta 6 anas and husband of the defendant has also purchased some property in the Northern side of suit schedule property. The husband of the defendant purchased Sy. No. 129 hissa 2B2.

For his and his brother Premanand's benefit out of the same they sold $\frac{1}{2}$ property to one Sulochana. At that time the Premanand and Ramesh have no access to their remaining property. Hence the plaintiff left 3 feet pathway in his land and executed agreement infavour of the Premanand. Thereafter Premanand sold his share along with pathway to defendant in the year 2007. The said Premanand and family members of the defendant used the said road to reach their land and she is using the said road since 1991. The defendant further contended that except that 3 feet width pathway, she has no other access to reach her property. Hence, she prayed for dismissal of I.A.No.1 filed by the plaintiff.

4. In the accompanying affidavit to I.A.No.2, the defendant has stated the same contents, which are stated in her objection to I.A.No.1 Further she contended that she has right to use 3 feet pathway, which is situated in the suit Sy. No. 130B property. She is using the said pathway from last 25 years and she acquired easementary right over the said pathway. Hence, she prayed for allowing the application.

5. The advocate for the plaintiff has submitted that his I.A.No.1 may be treated as objection to I.A.No.2.

6. Heard and perused the documents.

7. The following points arise for my consideration :-

- 1) Whether the plaintiff has made out a prima facie case ?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) If the temporary injunction is not granted, it will cause irreparable loss and hardship to the plaintiff?
- 4) Whether the defendant has made out ground for granting temporary injunction as prayed for?
- 5) What Order?

8. My answers to the above points are as under :-

Point No.1	Partly in the affirmative
Point No.2	Partly in the affirmative
Point No.3	Partly in the affirmative
Point No.4	Partly in the affirmative
Point No.5	As per final order for the following

:- REASONS :-

9. **Point NO.1 to 4 :-**

The present suit is filed for the relief of permanent injunction against the defendant, restraining her from interfering in the peaceful possession and enjoyment of the suit schedule property.

10. The plaintiff has prayed in the I.A.NO.1 that the defendant is creating new road and establishing new pathway in the suit schedule property. He prayed for restraining the defendant from creating any new road or new pathway. On the contrary the defendant has stated that she is having right to use 3 feet width pathway in the suit schedule property.

11. The plaintiff in support of his case has produced the RTCs pertaining to the suit schedule property and Sy. NO. 129/2B2, 2B1 and survey sketch.

12. The defendant has produced the RTCs of all hissas of Sy. No. 129 and agreement dt: 26/6/1996.

13. On perusal of the RTC produced by the plaintiff, prima facie it is clear that the plaintiff is the owner and in possession of Sy.No. 130B i.e, suit schedule property. The only contention of the plaintiff is that the defendant trying to create new road. The defendant has filed I.A.No.2 for restraining the plaintiff from using 3 feet pathway, it is clear that the defendant is interfering in the suit schedule property. The plaintiff has prima facie proved his case for granting Temporary injunction. Hence, he is entitled for the temporary injunction. It will suffice by restraining the defendant from creating new road in the suit schedule property. It does not mean that the defendant is restrained from using the pathway.

14. On perusal of the agreement produced by the defendant, it is clear that as per the agreement the plaintiff has executed agreement infavour of one Premanand Rama Naimk. In that agreement the plaintiff has given right of pathway to an extent of 3 feet in the suit schedule property Sy. No. 130B. The plaintiff and husband of the defendant and Gopalkrishna and Premanand are brothers. The Premanand and Ramesh Naik were using the said 3 feet width pathway to reach Sy. No. 130B and 129 hissa 2B1. The Premanand sold his property along with pathway to defendant through registered sale deed in the year 2007. Prima facie as per the agreement it is clear that the plaintiff has left 3 feet road in the suit schedule property. The defendant has stated in her affidavit that she is using the said road from last 25 years. She has not claimed any new road or creating any new road in the suit schedule property. As per the agreement at this stage, prima facie the defendant has proved that she has right of use of 3 feet width pathway in the suit schedule property. As per the contents of I.A.No.1, it is clear that the plaintiff is obstructing to use of the said pathway. It will suffice by restraining the plaintiff from obstructing the use of the said 3 feet pathway till disposal of the suit. Hence, I answered point NO.1 to 4 partly in the affirmative.

15. **Point NO.5** :- In view of the aforesaid discussions, I proceed to pass the following

:- O R D E R :-

I.A.No.1 filed by the plaintiff is partly allowed.

The defendant is hereby restrained from creating new road in the suit schedule property till disposal of the suit.

I.A.No.2 filed by the defendant is partly allowed.

The plaintiff is restrained from interfering in the defendant's right of 3 feet pathway till disposal of the suit.

Both parties are directed to maintain status-quo with regard to pathway.

(Dictated to the Stenographer, transcribed by her, transcript revised by me, corrected & signed & then pronounced in the Open court on this the 8th day of August 2016.)

(Mahesh Chandrakanth)
Civil Judge, Karwar.

(SNB)