

KAUK510005142024



**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA**

DATED THIS THE 30th DAY OF SEPTEMBER, 2024

**PRESENT:- DESHABHUSHAN KOUJALAGI,
B.A.,LL.B
Civil Judge and J.M.F.C., Haliyal**

O.S. No.67/2024

**BETWEEN : 01. SRI. MUSTAQ AHMED S/O APPASHA
LATHIFNAVAR.**

...PLAINTIFF

**AND : 01. SRI. NISSARAHAMMAD S/O
ABDULGAFAR DURGADI.**

...DEFENDANT

PARTIES TO I.A NO.I

**BETWEEN : 01. SRI. MUSTAQ AHMED S/O APPASHA
LATHIFNAVAR.**

...APPLICANT/ PLAINTIFF

(By: Sri. SBN/LSN, Advocates)

**AND : 01. SRI. NISSARAHAMMAD S/O
ABDULGAFAR DURGADI.**

...OPPONENTS/ DEFENDANTS

(By: Sri. RAT/VVR/MBP, Advocates)

ORDERS ON I.A. NO.I

The present application is filed by the plaintiff against the defendant under Order 39 Rule 1 and 2 of C.P.C. for the relief of temporary injunction to restrain the defendant or anybody acting on his behalf from interfering or obstructing the peaceful possession and enjoyment of the suit schedule property by the plaintiff till final disposal of the suit.

2. An affidavit is annexed with the instant application wherein, the plaintiff has deposed that, he is having access to the suit schedule properties from Haliyal-Dandeli Main Road. Whereas, the defendant is having access to his lands from Haliyal-Yadoga Main Road which are totally opposite side to one another. The plaintiff and defendant are using their respective ways from so many years and there was no any interference of any kind. The plaintiff is not having any sort of rights over the defendant's property and vice-versa.

3. It is further deposed in the affidavit that, the suit properties and the lands of the defendant are not adjacent lands and they are far away from each other. The suit properties are situated within the limits of Sambrani Village. Whereas, the lands of the defendant are situated within

the limits of Channapur Village. As per land records, neither lands share common boundaries and even they are not adjacent to each other.

4. It is further deposed in the affidavit that, the suit schedule 'B' property is adjacent to Survey No.1/2 measuring 05 acres 06 gunthas 12 annas situated at Channapur Village of Haliyal Taluk and same is belonged to one Sri. Mahesh Yellappa Pujari. The suit schedule 'A' property is adjacent to the suit schedule 'B' property. The owner of the land bearing Survey No.1/2 of Channapur Village by name Sri. Mahesh Yellappa Pujari is having access to his land from Haliyal-Yadoga Main Road and he is using the same since many years.

5. It is further deposed in the affidavit that, the defendant without having any justification has illegally claimed easementary rights through the suit schedule properties and in that regard, he has submitted a representation to Haliyal Police Station on 30.01.2024. On receipt of said representation, the Haliyal Police without enquiring into the matter properly and without conducting any spot inspection has addressed a letter to Tahasildar, Haliyal on the very same day by colluding with defendant by annexing Government Circular and sought for intervention of Tahasildar in resolving the dispute.

6. It is further deposed in the affidavit that, in pursuance of said letter of Haliyal P.S, the Tahasildar, Haliyal has issued a notice on 02.02.2024 to the plaintiff calling upon him to appear on 09.02.2024. In view of the same, the plaintiff was present before the Tahasildar, Haliyal on 09.02.2024 but, no proceedings were conducted on that day and the plaintiff was directed to come on 12.02.2024. Accordingly, the plaintiff has appeared before the Tahasildar on 12.02.024. However, without giving opportunity to file the objections to the representation of the defendant, the Tahasildar, Haliyal has proceeded with the matter and adjourned the same to 19.02.2024. On 19-02-2024, the plaintiff could not appear before the Tahasildar and the matter was adjourned to 26.02.2024.

7. It is further deposed in the affidavit that, on 26.02.2024, the Tahasildar, Haliyal concluded the enquiry and passed order by invoking Section 147 of Cr.P.C and directed the plaintiff to not to obstruct the defendant in using the road for transportation of agricultural produces and further directed to remove the obstacles if any. The Tahasildar has passed said order without making proper enquiry and the same is illegal one. The defendant by taking undue advantage of order passed by the Tahasildar, Haliyal is causing serious interference to the peaceful possession and

enjoyment of the suit schedule properties. There are every chances of further obstruction by the defendant to the possession and enjoyment of the suit schedule properties by the plaintiff. If defendant succeeds in the same, the same may result into multiplicity of proceedings. As such, it is very much necessary to allow the present application. If the present application is allowed, no loss or hardship will be caused to the defendant. On the other hand, if the present application is not allowed, the plaintiff will be put to irreparable loss and inconvenience. With these facts, the plaintiff prays to allow the instant application.

8. On the other hand, after issuance of suit summons and notice on I.A No.I, the defendant has appeared through his learned counsel and filed written statement and also filed a memo to treat the contents of written statement as objections to the instant application. Hence, it is necessary to look into the averments of written statement.

9. It is pleaded in the written statement that, the suit of the plaintiff is false, frivolous and vexatious. The plaintiff has not approached the Court with clean hands. The plaintiff himself has encroached Government road adjacent to agricultural land of defendant which has

blocked ingress and egress of the defendant to the main road of Haliyal-Dandeli from his land.

10. It is further pleaded in the written statement that, the suit schedule 'B' property i.e., land bearing Survey No.23/4 is adjacent to Channapur Village boundary and having boundary of Government road. But, the plaintiff with a malicious intention and to misguide this Court has shown in the description of the suit properties that, the land belongs to Sri. Mahesh Y. Pujari is situated towards northern side of suit schedule 'B' property. Survey No.1/2 of Channapur Village belongs to Sri. Mahesh Y. Pujari and earlier it was part of defendant's property.

11. It is further pleaded in the written statement that, the lands of plaintiff and defendant are adjacent to one another and there is a government road in between the said lands as shown in the maps. The plaintiff himself submits that, suit schedule 'B' property is adjacent to Survey No.1/2 of Channapur Village measuring 05 acres 06 gunthas. The said pleadings are sufficient to show that, land of the plaintiff and defendant are adjacent but not attached with one another because of existence of government road in between the lands of plaintiff and the defendant.

12. It is further pleaded in the written statement that, originally, Survey No.1/2 of Channapur Village was belonged to defendant's family and the same has been sold by the defendant's family to one Sri. Mahesh Y Pujari. On the northern side of land of Sri. Mahesh Y. Pujari i.e., Survey No.1/2, the lands bearing Survey No.1/3 to 5 are situated which are belonged to the defendant's family. As the land of Sri. Mahesh Y. Pujari is attached to the Government road, the defendant and his family members have road in the property of Sri. Mahesh Y. Pujari to access to Government road which is situated between the plaintiff and defendant's land.

13. It is further pleaded in the written statement that, the defendant has lodged a complaint before the Haliyal Police Station by alleging that, the plaintiff and two others are not allowing the defendant to transport sugarcane crop grown in his land. The said complaint was referred to Tahasildar, Haliyal by PSI of Haliyal Police Station. The Tahasildar, Haliyal has issued notice to plaintiff and others but they did not appear before the Tahasildar and after detail enquiry, the Tahasildar, Haliyal has passed an order on 05-03-2024 and directed the plaintiff and

others to remove the obstruction. Instead of clearing the said obstruction, the plaintiff has filed the present false suit.

14. It is further pleaded in the written statement that, the plaintiff has grown sugarcane and paddy crop by encroaching the road which is situated between the property of the plaintiff and defendant. When the defendant requested the plaintiff and others to remove the said encroachment for transportation of agricultural produces, they have refused to do so. When the Tahasildar, Haliyal has issued notice to the plaintiff and others, they did not appear before the Tahasildar and the plaintiff did not remove sugarcane and paddy crop but filed present suit and obtained ex parte injunction order. The plaintiff has grown the sugarcane and paddy crop in the road and he is obstructing the defendant to approach his land and he is also obstructing to transport agricultural produces and equipments. Therefore, the defendant was constrained to approach the Police Station and the same was referred to the Tahasildar and the Tahasildar has directed the plaintiff to remove the obstruction. The defendant is claiming his right of use of Government road which is kept for farmers' use.

15. It is further pleaded in the written statement that, the defendant and plaintiff are the adjacent agriculture land owners. In between the suit properties and the land of the defendant, there is a Government road for use of farmers. The said road connect to Haliyal-Dandeli Main Road.

16. It is further pleaded that, the land bearing Survey No.1 of Channapur Village belongs to the family of defendant and the same is divided into parts. The land of defendant in Survey No.1 of Channapur Village is situated on the edge of Channapur Village. Whereas, the land of plaintiff i.e., Survey No.23 is also sub-divided into some parts and the same is situated on the edge of Halasi Village. As the lands of plaintiff and defendant are situated on the edge of their respective Villages, the said lands are adjoining lands with each other.

17. It is further pleaded in the written statement that, the land of the plaintiff is on the southern side of land of defendant. Whereas, the land of the defendant is on northern side of plaintiff's lands. There is a Government road which start from Haliyal-Dandeli Main Road and it would end in the western boundary of both the lands i.e, river. The said

road which commences from Haliyal-Dandeli Main Road and ends at river is made for use of land owners.

18. It is further pleaded in the written statement that, the suit schedule 'B' property is attached to Government road on northern side of it. The suit schedule 'A' property is on the southern side of suit schedule 'B' property. The defendant's family has sold part of Survey No.1 i.e., Survey No.1/2 measuring 05 acres 06 gunthas to one Sri. Mahesh S/o Yellari Pujari. The said Survey No.1/2 is attached to the road on its southern side and on the back side i.e., northern side of Survey No.1/2, the land of the defendant is situated. The defendant is having road in Survey No.1/2 to reach his property.

19. It is further pleaded in the written statement that, the plaintiff who is the owner of property on other side of the road has encroached the said road and grown sugarcane and paddy crops. The said illegal act of the plaintiff is causing problems and disturbance to the defendant to reach his property and to carry out agricultural activities. As such, the defendant has given a complaint to Haliyal Police Station against the plaintiff and one Sri. Ashok Kallappa Moulangi in the month of January, 2024. The PSI of Haliyal Police Station has referred the

matter to the Tahasildar, Haliyal who has issued notices to the plaintiff and two others for enquiry but, they did not appear before the Tahasildar, Haliyal on 05.03.2024. After proper enquiry, the Tahasildar, Haliyal has passed the order and directed plaintiff and two others to not to cause obstruction to the farmers of Channapur Village to transport their sugarcane and other agricultural produces.

20. It is further pleaded in the written statement that, instead of removing obstruction i.e., the sugarcane and paddy crop grown on the road, the plaintiff has filed the present false suit contending that, the defendant is claiming easementary rights. The plaintiff has not approached the Court with clean hands and he has suppressed the material facts and trying to mislead the Court. The plaintiff has nowhere mentioned about Government road which is situated in between the suit properties and the land of defendant. The plaintiff is having no prima-facie case and no balance of convenience lies in his favour and there will be no loss or injury to the plaintiff. With these pleadings, the defendant prays to reject the present application.

21. Heard on both side. Perused the entire materials.

22. The plaintiff in support of his case has relied upon documents such as RTC of land bearing Survey No.23/1 of Halasi Village of the year 2023-24, RTC of land bearing Survey No.23/4 of Halasi Village of the year 2023-24, RTC of land bearing Survey No.1/3 of Chennapur Village of the year 2023-24, RTC of land bearing Survey No.1/4 of Chennapur Village of the year 2023-24, RTC of land bearing Survey No.1/5 of Chennapur Village of the year 2023-24, seven Photographs, RTC of land bearing Survey No.1/2 of Chennapur Village of the year 2023-24, xerox copy of Police Acknowledgment dated 30.01.2024, xerox copy of Letter addressed by plaintiff to the PSI, Haliyal, xerox copy of Letter dated 30.01.2024 addressed by PSI of Haliyal P.S to the Tahasildar, Haliyal, xerox copy of Circular of Government of Karnataka dated 20.10.2023, xerox copy of notice dated 02.02.2024 issued by the Tahasildar, Haliyal to plaintiff and another, xerox copy of Order-sheet of Tahasildar, Haliyal, xerox copy of Order passed by the Tahasildar and Taluka Executive Magistrate, Haliyal dated 05.03.2024, Village Maps of Halasi Village and Channapur Village, certified copy of Survey Sketch of Block No.23, RTC of land bearing Survey No.23/2 of Halasi Village of the year 2023-24, RTC of land

bearing Survey No.23/1 of Halasi Village of the year 2023-24, RTC of land bearing Survey No.23/3 of Halasi Village of the year 2023-24 and RTC of land bearing Survey No.23/4 of Halasi Village of the year 2023-24 and copy of order passed by the Hon'ble High Court of Karnataka in Writ Petition No.102824/2024 (GM-RES).

23. On the other hand, the defendant has relied upon documents such as RTC of land bearing Survey No.1/2 of Chennapur Village of the year 2023-24 along with certified copy of Sketch of Block No.1/2, RTC of land bearing Survey No.1/3 of Chennapur Village of the year 2023-24 along with certified copy of Survey Sketch of Block No.1/3, RTC of land bearing Survey No.1/4 of Chennapur Village of the year 2023-24 along with certified copy of Survey Sketch of Block No.1/4, RTC of land bearing Survey No.1/5 of Chennapur Village of the year 2023-24 along with certified copy of Survey Sketch of Block No.1/5, RTC of land bearing Survey No.23/1 of Halasi Village of the year 2023-24 along with certified copy of Survey Sketch of Block No.23/1, RTC of land bearing Survey No.23/4 of Halasi Village of the year 2023-24 along with certified copy of Survey Sketch of Block No.23/4, xerox copy of combined map of Halasi and Chennapur Villages, certified copy of Chennapur Gram Map,

certified copy of Halasi Gram Map, certified copy of Circular dated 20.10.2023 of Government of Karnataka, certified copy of Order of Tahasildar, Haliyal dated 05.03.2024 and nine Photographs along with Photo Receipt and C.D.

24. Having heard and perusal of the records, the following points arise for the consideration of the Court:

POINT NO.1: Whether plaintiff has made out a prima-facie case?

POINT NO.2: Whether balance of convenience lies in favour of the plaintiff?

POINT NO.3: Whether if TI is not granted, plaintiff would be put to untold hardship and irreparable loss?

POINT NO.4: What Order?

25. Findings of the Court on the above points are as under:

POINT NO.1: In the Affirmative.

POINT NO.2: In the Affirmative.

POINT NO.3: In the Affirmative.

POINT NO.4: As per final order for the following:

REASONS:

26. POINT NO.1 : The learned counsel for the plaintiff has argued that, there is no road of any kind in the suit schedule properties as claimed by the defendant and further argued that, the defendant has pleaded in his written statement that, there is a government road in between the lands of the plaintiff and the defendant but, in the proceeding which was pending before the Tahasildar, Haliyal, the defendant has taken a different stand that, he is having easementary rights of way over the suit schedule properties and as such, there is no clarity to the defendant in respect of his claim. The learned counsel for the plaintiff has further argued with regard to village map relied upon by the plaintiff and the defendant with reference to single dotted line in Sy. No.23 of Halasi Village.

27. On the other hand, the learned counsel for the defendant has argued that, there is a government road in between the lands of the plaintiff and the defendant from East-West direction and the same could be seen in the combined map of Halasi and Channapur Village which is produced by the defendant. The learned counsel for the defendant has further argued that, the plaintiff has obstructed the defendant to use and

enjoy the said government road and as such, he has submitted a complaint to the Haliyal Police who have referred the same to the Tahasildar Haliyal and in turn, the Tahasildar, Haliyal has initiated proceedings and finally passed an order dated 05-03-2024 and directed the plaintiff and another to not to obstruct the defendant from transportation of agricultural produces and equipments on the said road and also directed to remove the obstacles and after passing of said order, the plaintiff has filed the present false suit.

28. In the background of aforesaid rival submission, Court has perused entire materials. In nutshell, the contention of the defendant is that, there is a government road in between the lands of the plaintiff and the defendant and the same has been encroached by the plaintiff and he is not allowing the defendant to use it to carry out his agricultural operations. On the other hand, the plaintiff deny the existence of any such road and contends that, by taking the undue advantage of illegal order of Tahasildar, Haliyal, the defendant has started to disturb the possession of the plaintiff over the suit schedule properties and as such, he is constrained to file the present suit.

29. It is pertinent to note that, the defendant has not denied the title of the plaintiff over the suit schedule properties. Similarly, the

plaintiff himself has pleaded in the plaint that, the defendant and his other family members are the owners of the land bearing Survey No.1/3, 1/4 and 1/5 of Channapur Village. It is also not in dispute that, the suit properties are situated within the limits of Halasi Village and the aforesaid lands of defendant and his family members are situated within the limits of Channapur Village.

30. The main dispute between the plaintiff and defendant is with regard to alleged road which is stated to be situated between the suit properties and the land of the defendant. The plaintiff as well as the defendant have produced survey sketches of their respective lands. Admittedly, in the said survey sketches, existence of road of any kind is shown. In other words, no road of any kind is shown either in the lands of plaintiff or in the lands of defendant.

31. As already stated above, the plaintiff contends that, the defendant is disturbing his possession over the suit schedule property. On the other hand, the defendant contends that, a government road is in existence in between the lands of plaintiff and defendant and the same has been encroached by the plaintiff. A negative fact cannot be proved and the same is a general rule. In other words, it is not possible for the

plaintiff to prove that, there is no road. Under such circumstances, it is the defendant who has to prove the existence of alleged road.

32. At this pre-trial stage, both side parties have relied upon Village Maps of Halasi and Channapur Villages. By relying on combined map of Halasi and Channapur Villages, the learned counsel for the defendant has argued that, a road could be seen in between the suit properties and the land bearing Block No.1/2 of Channapur Village which was earlier the land of defendant's family.

33. On the other hand, the learned counsel for the plaintiff has argued that, the said combined map cannot be looked into as it is not an authenticated document. The learned counsel for the defendant has fairly submitted that, the said combined map is prepared for the convenience of the Court to know the disputed facts properly. Court has perused the said combined map and also the separate Village maps of Halasi and Channapur Villages.

34. On close scrutiny of Village maps of Channapur and Halasi Villages, it could be gathered that, towards northern side of boundary of Survey No.23 of Halasi Village, the boundary of Village of Channapur will start. Similarly, towards southern side of boundary of Survey No.1 of

Channapur Village, the boundary of Village of Halasi will start. On perusal of certified copy of Village map of Halasi, no cart road or government road is shown in the land bearing Block No.23 i.e., suit schedule properties.

35. As per the provisions of the Karnataka Land Revenue Act and Rules, a single dotted line in the Village map connotes the existence of pathway or ಕಾಲುದಾರಿ. Similarly, a double dotted line in the Village map connotes the existence of cart road or ಬಂಡಿದಾರಿ. On close scrutiny of Village map with reference to Block No.23 of Halasi Village, a single dotted line could be seen from east to west direction towards northern side of the land and thereafter, boundary of Block No.23 as well as last boundary of Halasi Village could be seen. The double dotted line is not shown nowhere in Block No.23 of Halasi Village. If entire Village map of Halasi Village is perused, one can clearly identify as to where the cart roads and where the pathways in the survey numbers of Halasi Village are situated. When it comes to Block No.23 of Halasi Village, one can gather that, there is no cart road in Block No.23 of Halasi Village. If cart road is situated at the edge of boundary line of Survey No.23 of Halasi Village towards its northern side then, double dotted lines could have been shown

below the boundary line of Survey No.23 of Halasi Village in its northern side. However, a single boundary line has been shown towards northern side of Survey No.23. The said boundary line towards northern side of Survey No.23 denotes the end of Survey No.23 as well as it denotes the last boundary of Halasi Village. Hence, the Village map of both Villages will not assist the defendant at this stage.

36. Admittedly, the defendant is claiming that, a government road is situated between the land of plaintiff and Block No.1/2 which was earlier the land of defendant's family. But, as per Village maps, either government road or cart road could be seen in between the suit properties and Block No.1/2 which is admittedly belonged to one Sri. Mahesh Pujari.

37. If the contents of written statement is taken into consideration, the case of the defendant could be summarized that, towards northern side of suit schedule 'B' property, alleged government road is situated and towards northern side of said government road, the land belongs to Sri. Mahesh Pujari in Block No.1/2 of Channapur Village is situated and thereafter, the lands of defendant and his family members are situated in the northern side of said Block No.1/2. The defendant has

pleaded that, to reach his lands from Haliyal-Dandeli Main Road, he has to use the said government road which commences from Haliyal-Dandeli Main Road and runs in between the suit schedule 'B' property and Block No.1/2 of Sri. Mahesh Pujari. However, there are no records at this stage on the side of the defendant to believe his case.

38. It is pertinent to note that, the Tahasildar, Haliyal has passed an order dated 05.03.2024 and thereby directed the plaintiff and another to not to obstruct the defendant to transport his sugarcane crop and also directed to remove the obstacles. However, nowhere in his order, the Tahasildar, Haliyal has discussed as to where exactly the alleged road is situated, whether the said road is cart road or pathway, from which place the alleged road will commence and to which place it extends and whether the said road is situated in the land of the plaintiff or outside the land of plaintiff etc. Moreover, the order passed by the Tahasildar, Haliyal is also quashed by the Hon'ble High Court of Karnataka. Therefore, Court opines that, to uncover the truth, it is necessary to hold trial. At this pre-trial stage, Court opines that, the plaintiff has made out prima-facie case on the basis of documents relied upon by him. On the other hand, at this stage, the pleadings of defendant and documents relied upon by him are

not enough to believe his version. To reveal the aforesaid disputed facts, it is necessary to go for trial by both parties. Hence, Point No.1 is answered in the **AFFIRMATIVE**.

39. POINTS NO.2 AND 3: Since these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts.

40. While granting the relief of temporary injunction, it is also necessary to find out as to whether the plaintiff is having balance of convenience on his side. In the present case, after going through the entire materials, it is also doubtful as to whether the defendant is claiming easementary rights over the suit properties or he is claiming the existence of government road after the northern boundary of suit schedule 'B' property. All these aspects have to be revealed through the process of trial. In view of aforesaid discussion, Court opines that, the plaintiff is having balance of convenience on his side when it compared to the case of the defendant. Under these circumstances, if temporary injunction is not granted, the more sufferer would be the plaintiff rather than the defendant. Hence, Points No.2 and 3 are answered in the **AFFIRMATIVE**.

41. **POINT NO.4:** In view of the findings on Points No.1 to 3,
Court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiff against the defendant under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

Consequently, the defendant or anybody acting on his behalf are hereby restrained temporarily by way of temporary injunction from disturbing or interfering or obstructing the possession and enjoyment of the suit schedule property by the plaintiff till final disposal of the suit.

No order as to costs.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the *30th Day of September, 2024*)

(DESHABHUSHAN KOUJALAGI)
Civil Judge and J.M.F.C., Haliyal