

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.,**  
**AT:HALIYAL.**

**P R E S E N T**

**Sri.Basavaraj.G Sanadi , B.A.LL.B(spl)**  
**Civil Judge & J.M.F.C., Haliyal.**

**ORIGINAL SUIT NO: 172/2018.**

**Dated this 21<sup>st</sup> day of October 2019**

**APPLICANT/**

**DEFENDANT/S** : 1.Sri. Durgappa S/o Basappa  
Waddar  
Age: 56 years, Occ: Business,  
R/o Bus stand Road  
Tq: Haliyal  
Dist: Uttar Kannada.

(By Sri. S.R.H., Advocate,)

- Vs -

**RESPONDENT/**

**PLAINTIFF** : 1. Smt. Hanamavva W/o Omanna  
Waddar,  
Age: 46 years, Occ: Household  
work and Agriculture,  
R/o Dharwad Road,  
Tq: Haliyal, Dist: U.K and  
others,

(Def No. 1 By Sri. S.R. G. Def No.2 by A..P.M, Advocates)

**ORDER ON IA NO 1 FILED UNDER ORDER 39 RULE**  
**1 AND 2 R/W. SEC. 151 OF CIVIL PROCEDURE CODE**

The applicant/plaintiff has filed this application with prayer to grant relief of temporary injunction against the defendants restraining defendants from obstructing the plaintiff from ingress and egress through the suit property, to reach his property. In support of the application the plaintiff has filed the affidavit and prayed to allow the application.

2. On the other hand defendants have appeared through the advocate. But they have neither filed objection to IA No.1 nor filed written statement.

3. The following points arise for my consideration;

1. Whether the applicant/plaintiff has prima facie case in his favour?
2. Whether the balance of convenience lies in favour of applicant/plaintiff?
3. Whether the applicant/plaintiff would suffer irreparable loss if the prayer for Interim injunction is rejected?
4. What order?

4. I have heard arguments on defendant side plaintiff side has not submitted argument and I have perused the

documents on record.

5. My findings on the above said points are as follow;

Point No. 1- : In "Affirmative"

Point No. 2- : In "Affirmative"

Point No. 3- : In "Affirmative"

Point No. 4- : As per final order for the following;

**: REASONS :**

**6. Point No. 1;** It is the specific case of the plaintiff that suit property is a passage to ingress and egress to the shed and the open space, measuring 5 guntas 8 annas, out of 18 guntas 8 annas, in block No. 139/2A/1A/3B, situated at Guttigeri village in Haliyal Taluk. The plaintiff purchased the suit property from the defendant No.2 and his mother late Balavva under the registered sale deed, dated 18-07-2006. At the time of purchasing of the said property, the property in question has been demarcated by preparing the KDT map also. Thereafter the defendant No.1 being the daughter of late Mukharya filed the suit for partition and separate allocation of 1/3rd share in the family property, including the property purchased by the plaintiff, in OS No. 45/2008 before this court and it came to be dismissed. Thereafter defendant No.1 prepared appeal in RA No. 19/2010 before the Hon'ble Senior Civil Judge Yellapur

sitting at Haliyal. The said appeal came to be allowed by granting 1/3rd share to the defendant No.1 and also observed that, the sale deed executed by the defendant No.2 and his late mother in favour of the plaintiff is not binding to the extent of the share allotted to the defendant No.1. In fact the defendant No.1 is entitled only to an extent of 6 guntas, 2.5 annas, out of 18guntas 8 annas of total extent of the land. Thus, even the property purchased by the plaintiff is to be considered as the share of the defendant No.2 and his late mother the share of the defendant No.1 will not be disturbed or reduced. The defendant No.1 filed F.D.P. No. 04/2012 before this Court and the final decree has been drawn as per its order dated 07-10-2016. Thereafter the defendant No.1 filed the execution petition No. 28/2016 and taken the possession as per the final decree drawn by this court.

6(a). Further submitted that the plaintiff has to ingress and egress the main road through the suit property itself and except the said place, there is no any alternative space to reach the main road. As per the final decree the name of the plaintiff is shown to 1st part in 3B portion and part 1,3 and 4 in 3/A portion jointly along which the defendant No.2 and late Balavva and defendant No.4 Demavva in the previous suit. Thus, though the land to an extent of 1

guntas 13 annas is reduced in the portion purchased by the plaintiff, his right in question has been allotted in different portion. Now the defendant No.1 on the strength of the final decree proceedings has started obstruction to ingress and egress to the property allotted to the share of the plaintiff. In fact, there was a Memorandum of understanding taken place in between late Mukharya and one Irappa Gunjekar to leave 9 meters, passage from Haliyal Dharwad road, towards the western side of the suit property for the purpose of better enjoyment of the property of Irappa, as well as the inmates of block NO. 139/2A/1A/3, which was earlier belonged to late Mukharya and same is also a passage to the plaintiff as per the MOU dated 16-07-2002, to ingress and egress to his property. Except the said passage, the plaintiff has no other alternative way to reach the suit property, wherein which the plaintiff is running the stones business and also having the residential shed. Thus the plaintiff has got the right of way by way of prescription and as well as absolute necessity. Therefore prayed to allow the I.A.

7. In support of the application plaintiff has filed affidavit and reiterated averments of the plaint. Plaintiff has produced documents i.e RTC and certified copies of judgment in OS No. 45/2008 and RA No. 19/2010 and also produced certified

copy of order in F.D.P. No. 04/2012 and certified copy of order sheet in Ex.P. No. 28/2016.

8. Learned advocate for the defendants has vehemently argued that there is no any passage to the plaintiff and plaintiff has no any easement right over the suit property. Further argued that plaintiff has suppressed material facts before the court and has not approached the court with clean hands. Accordingly prayed to dismiss the application. Plaintiff has not advanced the argument despite of providing sufficient opportunity.

9. On perusal of material placed by the both parties on record, it appears that plaintiff and defendant have got share in the suit property and on perusal of material placed before the court it appears that the share which has been fallen to the plaintiff is inside from the main road. No doubt it being for the declaration in respect of the easementary right and permanent injunction plaintiff has to necessarily prove his right of easement and continues use and enjoyment of said passage through the suit property since long time, to prove all these things obviously it needs trial. But at the stage if the plaintiff is restrained from ingress and egress to his property then plaintiff will be put into hardship. Further it is settled principle of law of that lands can not be locked, in

other wards if person is having no any other way other than what he claims to be the only passage for his access to his property, then he shall be allowed to make use of passage even through the property belongs to others. No doubt defendants can disprove the contention of plaintiff by adducing cogent and reliable evidence. Therefore now at this stage looking into facts and circumstance of the case and material produced before the court, it is my considered view that plaintiff has prima facie case in his favour. Accordingly I answer Point No. 1 in the Affirmative.

**10. Point no 2:** That at the present status of the case prima facie case is existing in favour of the plaintiff, Therefore the balance of convenience is also lies in favour of plaintiff. Hence I answer point No. 2 in Affirmative.

**11. Point no 3:** In the present case, where the prima facie case and balance of convenience are in favour of the plaintiff, hence If IA is not allowed then plaintiff will be put in to hardship or irreparable loss as discussed above in Point No.1. Hence I answer point No, 3 in Affirmative.

**12. Point no 4:** In view of my findings on Point No. 1 to 3 as discussed above, I proceed to pass the following;

**ORDER**

I.A. No. 1 filed U/o 39 Rule 1 and 2  
R/w. 151 of CPC by plaintiffs is hereby

allowed.

Defendants or anybody claiming under them are hereby restrained from obstructing the plaintiff from ingress and egress through the suit property till disposal of suit.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by him, revised by me and then pronounced in the open court, on this 21<sup>st</sup> day of October 2019)

Civil Judge And JMFC.,  
Haliyal.