

IN THE COURT OF Addl. CIVIL JUDGE & J.M.F.C, AT HONAVAR

Present : Sri. Smt.Sanmathi S.R. BA.L. LLM.,
Addl. Civil Judge & J.M.F.C, Honavar

Dated this 02nd day of March, 2020

O.S.No. 144/2018

Plaintiffs : Hanmanat Marthu Naik

(Plaintiff by G.V.B advocate)

V/S.

Defendants : 1. Arun Ratnakar Naik and others.

(Defendant No.1 by VRN advocate)

(Defendant No.3 by KSB advocate)

(Defendant No.4 by RNH advocate)

I.A.No.V

Applicants : Hanmanat Marthu Naik, Age 60

R/a. Nagarabastikeri Grammada Nagre,

Tq: Honavar.

V/s.

Opponents :- 1. Arun Ratnakar Naik,

Age: 40 years,

2. Ramnath Vasudev Shanbhag,

Age: 63 years,

3. Ganapati Ishwar Mesta,

Age:40 years,

4. Shanti W/o Arun,

Age: 67 years,

All are residing at.

Nagarbastikeri Grammada Nagre,

Tq: Honavar.

Order on IA.V

The plaintiff has filed this application U/O.39 Rule 1 and 2 R/W Sec. 151 of CPC seeking mandatory injunction against defendant No.1 and 4 with a prayer to direct defendant No.1 and 4 to remove the Arecanut plants planted on suit road, extended portion of cattle-shed and clipat walls in the suit road and to remove the fence taken through the suit road in the southern side of 4th defendants land and thereby to allow the plaintiff to take his power tillers and other 4 wheelers to his 'A' schedule property.

2. The brief facts of the plaintiffs case is as follows:-

That the plaintiff is the owner in possession of suit schedule 'A' property. Defendant No.1 is the owner in possession of suit item No.1 of 'B' schedule property. Defendant No.2 and 3 are joint owners in possession of item No.2 of 'B' schedule property. Defendant No.4 is the owner in possession of item No.3 of 'B' schedule property. Besides, plaintiff's 'A' schedule property in the southern side item No.3 of 'B' schedule property belongs to 4th defendant is situated. Next to item No.3 of 'B' schedule property in southern side item No.2 of 'B' schedule property belongs to defendant No.1 and 2 is situated. Next to item No.2 of 'B' schedule property in the southern side item No.1 of 'B' schedule property belongs to defendant No.1 situated. 26 guntas out of total extent of suit schedule 'A' property is dry land and remaining portion is a bhagayath land consisting coconut and Arecanut plantation. There exists a house belongs to plaintiff's wife. There is road in suit schedule properties. That road runs through suit item No.1 to 3 of 'B' schedule property and finally reaches plaintiff's 'A' schedule property. The said road is about 14-16 feet width. Plaintiff and predecessor are using said road to get access to 'A' schedule property and to take necessary things like sand, fertilizers etc., for

the purpose of the cultivation. He is using said road to take his tipper and other mini trucks to carry yields and other accessories necessary to his land and to take out of the land. Towards northern side of 'A' schedule property Sharavathi river is flowing and towards eastern side there exists river Adjunct. So, apart from said suit road he has no any other road to get access to his 'A' schedule property. It is further stated that the three properties of 'B' schedule property originally belongs to father of defendant No.3 Ishwar S/o Ganapati Mesta. Later land situated in Sy.No.240 and 241 were purchased by Gangamma W/o Panduranga Naik. Said Gangamma after 20 years sold 2 acres 19 guntas situated in Sy.No.240 to this plaintiff and remaining 1 acre 15 guntas was sold to her daughter 4th defendant. Therefore sy. No.240/1 belonged to plaintiff and Sy.No. 240/2 belonged to defendant No.4. Prior to sale said Gangamma was using the road as of right and after sale plaintiff since 1985 that is since 33 years using said road openly without obstruction with the knowledge of the defendants. Hence perfected his title with respect to suit road by way testamentary right of prescription. Therefore, defendants are having no right to obstruct plaintiff's right to use suit road. It is further stated in the plaint that the plaintiff and defendants with each others consent have constructed common gate at the entrance with horizontal wooden bars and a small iron gate. They are using said Danape {horizontal wooden bars} to ingress and exit from their land and iron gate is used to take cattle. They are further using said Danape to take vehicles to their respected lands to take yields or other accessories needed for agriculture purpose. When the things are like this defendant No1 started to obstruct plaintiff to take vehicles to his land through said road. When the plaintiff tried to bring vehicle through the said danape defendant No.1 came to assault plaintiff. When he told about this matter to

defendant No. 2 and 3 they told that they have sold their suit item No2 of 'B' schedule property to defendant No.1 and hence they have no concern with the matter. 4th defendant daughter is the wife of defendant No.1. hence defendant No.4 is not saying anything to defendant No.1, rather she is in favour of defendant No.1. Under these circumstances plaintiff put to hardship. He has no other road to get access to his suit property. He has perfected his title over said road by way of easement right by prescription. Hence filed this suit seeking declaration to declare that he has perfected his right with respect to suit road by easement right of prescription. Thereby he sought Permanent injunction to prevent defendants from obstructing plaintiff to use said road.

3. Plaintiff has filed this application seeking mandatory injunction against defendant No.1 and 4 with a prayer to direct defendant No.1 and 4 to remove the Arecanut plants planted on suit road, extended portion of cattle-shed and clipat walls in the suit road and to remove the fence taken through the suit road in the southern side of 4th defendants land and thereby to allow the plaintiff to take his power tillers and other 4 wheelers to his 'A' schedule property. injunction to restrain defendants from obstructing plaintiff to use suit road till disposal of this suit.

4. On the other hand defendants have appeared through their counsel. Defendant No.3 filed written statement and admitted about existence of suit road as stated by the plaintiff in his plaint. Whereas defendant No.1 filed objection to IA No.V. In the objection he denied existence of 16 foot road in the suit schedule properties. He denied that they have newly constructed cattle-shed, connected clipat walls and planted Arecanut plants after exparte TI. It is his contention that plaintiff by filing false affidavit trying to take mandatory injunction to

remove the cattle-shed, clipat walls and pipe line, Arecanut plants and fence which were already in existence prior to filing of this suit. It is further stated that plaintiff filed this application prior to filing of commissioner report so as to take mandatory injunction. Hence, prays to reject the application.

5. Heard the arguments of learned counsels for both plaintiff and the defendants on IA.V. Perused the application, objection and other materials available on record. Following points arise for my consideration:-

1. Whether the plaintiff prove that he has prima facie case to get T.I.?
2. Whether the plaintiff proves that balance of convenience lie in his favor?
3. Whether the plaintiff proves that he will be put to irreparable loss and hardship if T.I. is not granted?
4. What Order?

6. My finding on the above points are as follows :

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

7. Point No.1 to 3 : Point No. 1 to 3 interlinked with one another. In order to avoid repetition of facts, I have taken all the three points together for common discussion.

8. Plaintiff come up with the application seeking mandatory injunction against defendant No.1 and 4. with a prayer to direct defendant No.1 and 4 to remove the Arecanut plants planted on suit

road, extended portion of cattle-shed and clipat walls in the suit road and to remove the fence taken through the suit road in the southern side of 4th defendants land and thereby to allow the plaintiff to take his power tillers and other 4 wheelers to his 'A' schedule property. It is his assertion that the suit road is in existence prior to purchase of his land. It run through 'B' schedule property and reaches to his land in 'A' schedule property. According to him he is using said road since 1984. He is using said road openly with the knowledge of defendants since purchase of suit schedule property. Hence, contended that he has perfected his title with respect to suit road by easement right of prescription. In order to show about existence of suit road and his right to use said road, he has produced photo's, RTC's pertaining to suit schedule properties and village map. On perusal of documents and photo's prima facie material found to believe about his right, title or interest of the plaintiff in the suit schedule A property and about existence of road in the suit schedule properties. Further plaintiff through documents showed that he is in possession of suit schedule 'A' property.

9. Plaintiff relied upon commissioner report to show about existence of alleged road. He further referred commissioner report and stated that commissioner has written in his report about plantation of Arecanuts plants and construction of extended portion of cattle-shed newly. He further relied commissioner report to show that defendants have taken pipe line, Clipat Walls and have taken fence in the suit road. On perusal of commissioner report, the commissioner has written in his report about existence of road. It is also clearly stated in the report that plaintiff has no any other road or pathway to get access into his suit 'A' schedule property apart from suit road. On further perusal of commissioner report in para No.1 page No.3 it is specifically

stated about plantation of Banana plants and Arecanut plants opposite to main gate. In the same page at para No.2 it is specifically written so as to say that the extended portion of cattle-shed is found to be constructed newly. Further in page No.4 commissioner has reported about pipe line and clipat walls in the suit road and about fence crossing the suit road. The commissioner report discloses about existence of pipe line, clipat wall on the road and fence was constructed newly. On perusal of commissioner report the alleged interference as stated in the application is found to be true.

10. On the other hand defendant No.3 in his written statement admitted about existence of suit road as described by the plaintiff in his plaint. Defendant No.1 and 4 though filed objection to this application, they have not shown valid reasons to deny the relief sought by the plaintiff. Moreover during arguments counsel for the defendant No.1 admitted about existence of road in the suit schedule properties, but denied that the said road is 16 feet width as stated in the plaint. It is the contention of the defendant No.1 that commissioner has visited to the place on 15-02-2018 and plaintiff filed this application 17-12-2018 i.e. prior to filing of commissioner report. By referring this point counsel for the defendant No.1 argued that plaintiff prior to filing of commissioner report filed this application with false affidavit to get order from the court to remove the Arecanut plants, pipe line and cattle-shed which were in existence of prior to filing of this suit.

11. In this case, after filing of commissioner report defendants have not filed objection to commissioner report. Commissioner has filed his report on 01-01-2019. On careful perusal of entire materials available on record, I am of the clear opinion that plaintiff has shown about existence of prima facie materials to believe his right, title or

interest in the suit schedule 'A' property. He has shown prima facie materials to believe about existence of road in the suit schedule properties. Commissioner report revealed about the alleged interference i.e. planting Arecanuts trees, construction of extended portion of cattle-shed and fence as alleged in the application. Defendant No.1 filed objection and denied the allegation made in the application. Whereas, he has not filed objection to commissioner report. Hence at this stage sufficient grounds made out to grant mandatory injunction against defendants. The other matters that is with respect to the width of the road etc are to be determined in a full fledged trial. Till then plaintiff is having legitimate right to use the road to get access to his land. As the materials put before the Court shows that he has no any other way to access to the suit land, if this application is not allowed. He will be put to more hardship. As such balance of convenience is in favour of plaintiff. Therefore point No.1 to 3 answered in the Affirmative.

12. Point No.4 : In view of my answer to point No.1 to 3 in the Affirmative, I proceed to pass following:-

ORDER

IA No.V filed by the plaintiff is hereby partly allowed.

Defendant No.1 and 4 are hereby directed to remove the extended portion of cattle-shed, temporarily constructed fence in the southern side of 4th defendant's land and Areca-nut plants planted on the suit road after granting ex parte T.I in the suit to enable plaintiff

to take power tiller to his suit schedule

'A' property without any obstructions.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court on this **02nd day of March, 2020**)

Sd/-

(Sanmathi S.R.)

Addl.Civil Judge, Honavar