

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 2nd day of March, 2020

O.S.No. 144/2018

Plaintiffs : Hanumnath Martu Naik
(Plaintiff by G.V.B advocate)
V/S.

Defendants : 1. Arun Ratnakar Naik and another.
(Defendant No.1 by VRN advocate)
(Defendant No.4 by RNH advocate)

I.A.No.VIII

Applicants : 1. Arun Ratnakar Naik,
Age about 40 years,
R/a. Nagarbastikeri, Nagre,
Tq: Honavar.
2. Shanti W/o Arun,
Aged about 67 years,
R/o Nagarbastikeri, Nagre,
Tq: Honavar.

V/s.

Opponent :- Hanmant Martu Naik,
Aged about 60 years,
R/a. Nagarbastikeri, Nagre,
Tq.Honavar.

Order on IA No.VIII

Defendant No.1 and 4 have filed this application U/O.39 Rule 4 R/W Sec. 151 of CPC with a prayer to vacate and set aside order of exparte Temporary injunction passed on IA No.I.

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 their 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. Defendant No.1 and 4 have filed this application U/O.39 Rule 4 R/W Sec. 151 of CPC with a prayer to vacate and set aside order of Temporary injunction passed on IA No.I.

4. On the other hand plaintiff has filed objection to this application and oppose the application. It is stated in the objection that defendant No.1 and 4 merely denied the plaint averments but there is no truth in their written statement and objection filed to IA No.I. He denied entire averments made in the application and contended that he has no any other way except suit road to get access to his 'A' schedule property. He denied the contention taken in par No.14 of the objection and stated that it is concocted and created by the defendants to defeat the plaintiff by taking order from the court to set aside the T.I granted in favour of plaintiff. Hence, prayed to reject the application.

5. Heard the arguments of learned counsels for both plaintiff and the defendants on IA.No.VIII. Perused the application, objection and other materials available on record. Following points arise for my consideration:-

1. Whether the plaintiff made out grounds to allow the application?

2. What Order?

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

Point No. 1 : In the Negative

Point No.2 : As per final order for the following ;

REASONS

7. Point No.1: Defendant No.1 and 4 come up with the application with a prayer to vacate and set aside order of Temporary injunction passed on IA No.I seeking T.I. Whereas, it is his assertion of the plaintiff 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, 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.

8. Plaintiff relied upon commissioner report to show about existence of alleged 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 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 in IA No.I. 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 14 to 16 feet width as stated in the plaint.

9. On careful perusal of entire materials available on record, I came to the conclusion that plaintiff has shown about existence of prima facie materials to believe his right, title and interest in the suit schedule 'A' property. He has shown prima facie materials to believe about existence of road in the suit schedule properties. Hence, IA No.I allowed. As such this application filed by the defendant No.1 and 2 does not survey for the consideration. Therefore, Point No.1 answered in the Negative. Hence, following:-

10. Point No.2 : In view of my answer to point No.1 in the Negative, I proceed to pass following:-

ORDER

IA No.VIII filed by the defendant No.1 and 4 u/o 39 rule 4 r/w sec 151 of CPC with a prayer to vacate or discharge the exparte temporary injunction granted on IA No.1 is rejected.

(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 and JMFC.,
Honavar.**