

KAUK720002452025



**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC.,
KUMTA, AT; KUMTA, UTTARA KANNADA**

Dated this the 9th day of March, 2026

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

O.S.No.25/2025

BETWEEN:

Sri. Ramachandra S/o. Honnayya Naik
and others

...Plaintiffs.

(Rep. By Smt. Annapurna S.S. advocate)

V/s.

AND:

M/s. Biogen Wellness Private Limited
and others

...Defendants.

(Rep. By N.M.N. Advocate for D- 1 to 5
D6 V.R.B. Advocate
D7 to D14 and 16 and 27 by A.G.P.
D15 by P.K.T.Advocate)

I.A.NO. IV and VI

Sri. Ramachandra S/o. Honnayya Naik
and others

...Plaintiffs/Applicants.

V/s.

M/s. Biogen Wellness Private Limited
and others

...Defendants/Opponents.

Provision	U/o. 39 Rule 1 and 2 R/w. 151 of CPC AND U/o 39 rule 4 of CPC
Relief sought for	Grant an order of Temporary Injunction and for vacate expart T.I order
Application dated	24-09-2025
Application No.	IV and VI
Objection filed on	Written statement
Order passed on	09-03-2026

ORDER ON I.A.No.IV AND VI

Applicant/plaintiff has filed I.A.No.4 U/o. 39 Rule 1 and 2 R/w.Sec.151 of CPC for issuance of temporary injunction against the defendant 1 to 5 restraining the defendant no.1 to 5 their agents, servants or anybody acting on behalf of defendants

abstracting the plaintiffs from using public road runs in between Kagal – Kirubele through survey No.135/1.

2. I.A.No.VI filed by defendant no.1 to 5 to vacate the Ex-parte injunction order.

3. IA No. IV supported with affidavit of plaintiff No.1. In the affidavit it is stated that, That the petitioners are permanent residents of Kagal and Kirubele village of Kumta Taluk, Uttara Kannada District, are doing agriculture work. Further the petitioners and villagers to reach their village passes through the path runs in Sy.No.135/1, since time immemorial and now the said path developed by the Kagal Gram Panchayat by leveling the the said path which is existing in the form of jerry. Now the defendants no.1 to 5 have blocked the said public road, except the said road the plaintiffs have no other road to reach their village, the said road is using by the villagers to go to market, hospital, school, college but the defendants no.1 to 5 obstructing the plaintiffs from using the said road. The plaintiffs have made several representations to the defendant no.6 to 15 in writing for removal of encroachment of the road path by the encroaches.

The E.O Taluka Panchayat Kumta, PDO have visited the village and conducted spot inspection and assured to resolve the dispute, but they have not taken any steps for removal of encroachments. It shows that the defendants are in collusion with each other. It is obligation on the part of officials that is defendant no.6 to 15 to take appropriate steps for protecting the road and the provisions of the Karnataka Land Revenue Act. Further, the Hon'ble Apex court in the matter of Civil Appeal No.1132/@SLP(C) No. 3109/2011 (arising out of special leave petition (Civil) C C No 19869/2010) directed all Chief Secretaries of the states and union territories in India who will ensure strict and prompt compliance of the order and to submit compliance reports to the Apex court from time to time and the respondents have failed in discharging their statutory duties and not complied the orders and it is the duty of the defendants to remove the encroaches and clear the roads for use of the abutting owners for whose benefits the roads have been formed. The inaction on the respondents is arbitrary and not sustainable in law.

4. The plaintiffs filed suit before the Tribunal seeking declaratory relief and permanent injunctive relief against the defendants regarding the road in question. Since it will take a long time for this suit to be disposed of, the defendant; Since there is a possibility of interference with their right of way on the road, they, have filed an interim application, praying for an interim injunction against the defendant No.1 to 4 and their representatives, until the disposal of this suit, so that they, do not interfere in any way with their right of way on the road, take their vehicles and cattle.

5. Further stated that suit schedule Road is the only connecting road for the residents of Kirubele and the devotees going to the religious pilgrimage centers of Guru Math and Jatagan Devasthala in Kirubele and to Kagalkote in Kirubele itself, which is a public road. Said Road is also the only connecting road to the Malki fields. Said road which starts from the main road runs from Kumta to Aghanashini, Malki Survey No.; 160 and passes through Forest Survey No.; 130A. The same continues in the same manner and also provides access to the

cemetery land situated at Survey No. 609 for the residents of Kirubele. However the defendant No.1 to 5 using the public road for the purpose of their properties the public road that has been passing through the forest department since time immemorial is being given to private use. The defendants no.1 to 5 have systematically blocked the area at the end of the Said road that used to pass through the Malki Survey number of the 1st to 5th defendants which reaches the sea shore. Now the defendants no.1 to 5 saying that there is no road, and by saying so they have put up an iron gate on the way to the sea shore. Hence the plaintiffs In this regard given written complaint along with documents to all the concerned officials of the Karnataka government, but no action has been taken. The government has already spent a lot of money on the said road and now if it is handed over to private use, it will be a betrayal of the government treasury and the tax money of the citizens.

6. The 1st defendant company is a company established for tourism and the director of the Said company, have been involved in conducting eco-tourism and in compiling the

necessary documents from each government department, have obtained the certificates to be obtained from various departments, and have applied to the Forest Department to get use the forest road to their destination. The Forest Department has conducted a GPS survey as per the request. And the Forest Department has obtained the replacement area from them under their survey number. They are giving them the road in their forest area. Hence the defendants no.1 to 5 obstructing the plaintiff from using said road saying plaintiffs and villagers should find another way to travel. The defendant no.1 to 5 have already purchased many Malki Survey numbers at low prices in collusion with each other and are trying to purchase other properties along with properties of plaintiff's family, but when plaintiffs refused the defendant no.1 to 5 started harassing the plaintiffs by making it impossible for them to move around and by somehow forcing them to sell their properties and leave the village. The Forest Officers, ignoring the right of the suit public road that has existed since the British era. The area 0-11-0 in Section 7 of Survey No. 133 in the name of the Governor of Karnataka State, by the Deputy Conservator of Forests,

Honnavar, they are permitting the defendants to use said road for private use. The "11E" map has been also prepared in this regard. And the registration of the gift deed is also in process.

7. The plaintiffs are using the said suit road since time immemorial. Now, the government by handing over the said suit Road to private parties, by taking away the rights of plaintiffs and other villagers. The defendants no.1 to 5 nor the defendant no.6 to 15 got any right to curtail or take away the right of enjoyment of the plaintiffs on the suit road, or to obstruct it. The plaintiffs have given complaints in writing but no action has been taken by government officials. For this reason, the plaintiffs filed the suit seeks to make all the relevant government departments defendants. The plaintiffs have filed this suit against all the defendants to protect their right of way, which they have had since time immemorial, on the public access road to and from Kirubele and Kagali. Hence Plaintiffs are entitled to a order of temporary injunction against the 1st to 5. They got prima facie case and balance of convenience lies in their favour,

if the application is not allowed hardship caused to the plaintiffs hence prays to allow the application.

8. The defendants no.1 to 5 filed their objections to I.A.No.IV. Initially when the plaintiffs filed suit the exparte order was passed restraining the defendants no.1 to 5 not to obstruct the plaintiffs from using the public suit schedule road. Hence the defendant no.1 to 5 have filed I.A.No.VI to vacate the T.I order.

9. In their objection the defendant no.1 to 5 have contended that, they have purchased the property to run a resort. They have already obtained the permission from concerned authorities. And they are not obstructing the plaintiffs from using the public road. But the plaintiffs only to harass the defendants are filing one or other complainants and filed this suit. I.A.No.VI supported with Affidavit of Defendant no.2 stating that the suit filed by the plaintiffs against these defendant no.1 to 5 is not maintainable. The plaintiff filed this suit on false allegations. The suit schedule road is not in existence, hence the suit of the plaintiffs is not maintainable

one, and the same has to be decided by framing of preliminary issue.

10. It is not cleared by the pleadings, how the plaintiffs valued the suit for Rs.5,00,000/- then how can they paid the court fee of Rs.50/-. Hence the court fee paid by the Plaintiffs is not proper, hence the suit of the plaintiff is liable to be dismissed on this ground. This court has no pecuniary jurisdiction to try this suit. The plaintiffs claiming right over the forest property Sy.no.130/A hence as per Karnataka Forest Act 1963 this court has no jurisdiction to try the suit.

11. Further denied the other contents of affidavit of plaintiff no.1 filed in support of I.A. The defendants filed requisition to Ministry of Environment and Forest, Regional Office, with respect to the road runs though forest land Sy.no.130/A. the authority by its order dated 05.11.2024 have given permission to these defendants on certain conditions. As per the said condition the first defendant has to gifted land bearing Sy.no. 133/6 meg 0-15-12, Sy.No.133/7 meg 0-9-8, Sy.no.133/8 meg 01-04-12 and Sy.no.133/9B meg 0-16-8 in

the name of Governor. The name of governor entered in MR.No.H16/2025-2026 and first defendant paid the amount of Rs.34,15,194/- to the government and then the government provided to use the said road runs through Forest No.13/A. But the plaintiffs filing one or another complaint against these defendants, if the said road is improved it not only helps to the defendants to use but it also useful to plaintiffs. Hence on these grounds the defendant no.1 to 5 prays to dismiss the application filed by plaintiff and vacate T.I by allowing I.A.No.VI.

12. Heard both learned counsel for plaintiff and defendant No.1 to 5. Learned counsel for defendant no. 1 to 5 relied on citations along with provisions reported in; AIR 1983 Pat 272 in the case of Mana Das V. Kisto Das., (2020) 2 SCC 338: in the case of Yashwant Sinha Vs. CBI, T.N. Godavarman Thirumulpad Vs. Union of India (1997) 1. AIR 4. 4. (2012) 6 SCC 792 and ILR 2005 KAR 884 in the case of T.L. Nagendra Babu Vs. Manohar Rao Pawar.

13. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration.

1. Whether the plaintiff has established prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?
4. What order?

14. My findings to 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 order for the following:

REASONS

15. **POINT NO.1:-** Application supported with affidavit of plaintiff no.1 they have filed suit for declaration and injunction, the defendants are restraining from using the suit schedule road, the suit schedule road is only a road suing by plaintiff the

same is running up to the property purchased by defendant no.1 to 5, it is a connectivity road to Kagal from Kumta Aghanashini main road. Using of road by the Kirubele Villagers is well known to the said local government authorities, the same is a public road, but illegally the government authorities have permitted defendant no.1 to 5 to firm the road to their resort. The government authorities permitting defendant no.1 to 5 to use the road passed though forest land. The said road is public road, villagers using the said road to got to market, hospital, school, colleges, graveyard, sea shore, but the defendants are restraining the villagers from using road, plaintiffs submitted their requisition along with documents to the government officials, but the government officials are not taking any action.

16. To show prima facie case the plaintiffs produced the copy of resolution passed by government sanctioning amount of rupees fifty lakh for firm of road, copy of information dated 25.10,2021, 12,10.2021, and 25.10.2021 given to Dayanand Venkappa Naik, Vinayak Bhandari, and Nagesh Venkat Naik by

Gram Panchayath Kagal application filed under right to information act, letter dated 28.11.2018 issued by Port Department, to Mangaldas Shetty, letter dated 18.12.2020 given by Kagal villagers boycott Gram Panchayath election and certified copy of plaint in O.S.No.18/2023.

17. On the other hand the defendants also produced the letter issued by additional chief secretary, forest, ecology and environment department. Letter dated 22.09.2025 issued by District Commissioner, Uttar Kannada, Karwar, application dated 11.09.2025 submitted by Dr.Nagesh to additional chief secretary, forest, ecology and environment department along with six documents. The copy of letters issued by additional chief secretary, forest, ecology and environment department. The letter submitted by Ramachandra H Naik, Kumta to Additional Chief Secretary, Govt of Karnataka.

18. Hence on perusal of pleadings and documents reveals that the defendant no.1 to 5 have purchased the properties at Kirubele to start a resort. But it is contention of plaintiffs that after purchasing the said land the defendants no.1 to 5 have

obstructing the plaintiffs and other villagers them from using the suit schedule road, the said road is using by villagers since from British rule in India. Neglecting the public right and interest the forest department going forward to permit use the said public road for private persons. In return they are accepting the land Sy.no.133/7 meg 0-11-0 from the plaintiff in the manner of gift. The process is going on to register the gift deed and preparation of "11-E" sketch.

19. Documents shows that the plaintiffs and villagers are using the suit schedule road from time immemorial, now the private persons acquire the same hence there is no road for the plaintiff and villagers to use the same. The villagers using the said road to go to market, school, college, hospital. But defendant no.1 to 5 obstructing the villagers and plaintiffs from using the road, On 27.01.2025 plaintiff no.1 filed application before the defendant no.6 to reject the permission, the said letter was forwarded to defendant no.8, but they have not taken any steps. As the government officials have not taken any action, hence the plaintiffs filed this suit, made all the government

officials as party to the suit. Defendants not denying existence of road, but it is their contention that they are not obstructing the plaintiffs from using the road.

20. The plaintiffs are using the suit schedule road from time immemorial, now the private persons acquire the same, hence there is no road for the plaintiff to use the same. Considering the materials placed on record plaintiff has established an arguable case, which is fit for going to the trial. Hence, plaintiffs have established prima facie case. Balance of convenience tilts in their favour, The suit schedule road is public road, hence it is necessary to restrain the defendant no.1 to 5 from obstructing plaintiffs from using said suit schedule road. If the application is allowed no hardship will be caused to the defendant no.1 to 5, if the application is not allowed irreparable loss caused to the plaintiffs.

21. Hence defendant no.1 to 5 not made any grounds to vacate temporary injunction order. Therefore, **point No.1 to 3 answered in the Affirmative.**

22. **POINT NO.4** :-In view of the reasons assigned above, above, I proceed to pass the following order.

ORDER

I.A.No. IV filed by the plaintiffs against the defendant No.1 to 5 Under Order XXXIX Rule 1 and 2 is hereby allowed.

The defendants No.1 to 5 are hereby restrained from obstructing the plaintiffs from using, moving their vehicles and their cattle's from the suit schedule road till disposal of the suit.

Consequently IA No. VI filed by the defendant No.1 to 5 Under Order XXXIX Rule 4 is hereby dismissed.

(Dictated to the stenographer, transcribed by her, then corrected and pronounced by me in the open Court on this the 9th day of March, 2026)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.