

KAUK720002452025



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

**Dated this the 4<sup>th</sup> day of April, 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 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. V**

Sri. Ramachandra S/o. Honnayya Naik  
and others

...Plaintiffs/Applicants.

**V/s.**

M/s. Biogen Wellness Private Limited  
and others

...Defendants/Opponents.

<b>Provision</b>	U/s. 39 Rule 1 and 2 R/w. 151 of CPC
<b>Relief sought for</b>	To remove iron gate placed at malki boundary in Sy.No.135
<b>Application dated</b>	24-09-2025
<b>Application No.</b>	<b>V</b>
<b>Objection filed on</b>	Written statement
<b>Order passed on</b>	04-04-2026

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**ORDER ON I.A.No.V**

Applicant/plaintiffs have filed this present application U/o. 39 Rule 1 and 2 R/w.Sec.151 of CPC for issue direction to defendant no.1 to 5 to remove iron gate placed at malki

boundary in Sy.No.135 and restraining the plaintiffs and other villagers by using to reach the seashore.

2. IA No. V supported with affidavit of plaintiff No.1. In the affidavit it is stated that, the plaintiffs are permanent residents of Kagal and Kirubele village of Kumta Taluk. The disposal of present case on merits will take some time. Hence if the defendant no.1 to 5 not directed to remove the gate placed in Sy.no.135 will cause hardship to plaintiffs. Hence plaintiffs filed this present application for injunction against the defendant no.1 to 5.

3. The suit schedule road is only road to the Kirubele Villagers to connecting to Gurumath, Jatgan Temple and two grave yards, and the same is public road, which also leads to the property of defendant no.1 to 5. The said public road runs through land Sy.no.160, forest Sy.no.130A. It is a public road using by above said villagers, but the government officials are permitting the defendant no. 1 to 5 to form a private road to approach their resort. The government officials also permitting the defendant no.1 to 5 to use the said road which pass through

forest land, the same is a public road. But the defendant no.1 to 5 not allowing the villagers to use the road and they closed the same. Except this road there is no road to approach seashore, Though the plaintiffs have given complainants to government officials with documents, but they have not taken any action. The government has spent huge amount for forming of said road, if the said road is using for privatization it causes loss to the treasury of government and it is nothing but miss use of tax amount of public.

4. The first defendant purchased property to start a resort, but they are using the public road to reach the property they purchased, though they have no right, but they are restraining the plaintiffs and villagers from using said public road. The defendant no.1 to 5 have purchased several properties at Kirubele village from some villagers. And now they intends to purchase the properties of plaintiffs also, but when the plaintiffs refused to alienate their properties to defendant no.1 to 5, they started harassing plaintiffs, they restraining plaintiffs from using public road, the forest officers also handed over the public road

to defendants which was using by the villagers from time immemorial. In return the defendant no.1 to 3 have handed over their land in Sy.no.133 /7 meg 0-11-0 to the government by way of gift to forest conservation officer Honnavr under register gift deed and preparation of 11-A sketch is in process.

5. The plaintiffs are using the said road from time immemorial, the villagers using the said road from British ruling, but neglecting the interest of villagers, now the same is handed over to private persons. The villagers are using the said road to go to market, hospital, school and college. Though the plaintiffs complained the same to defendant no.6 to 25 but they have not taken any action against the defendant no.1 to 5. hence, the plaintiffs approached the court, hence it is necessary to restrain the defendant no.1 to 5 through injunction order. The plaintiffs have made prima facie case, balance of convenience lies infavour of plaintiffs, hence if the application is allowed no hardship caused to the defendants, hence prays to allow the application. Hence prays to allow the application.

6. The defendants no.1 to 5 filed objection to I.A.No.V, contending that, the plaintiffs not properly valued the market value of the suit property and no proper court fee paid, hence the plaintiffs are not entitled for the relief claimed. Further contended that this court has no jurisdiction to try the case. Further denied the other contention taken by plaintiffs in their application. The defendant no.1 to 5 never restrained the plaintiffs from using road. The defendant no.6 to 24 are the government officials but the plaintiffs not issued any prior notice to said defendants under section 80(1) of CPC. The reasons mentioned in dispense application filed under section 80(2) of CPC are not acceptable one. The plaintiffs filed false complainant against these defendants, also filed W.P.No.103726/2021 before the Hon'ble High Court of Karnataka. The Hon'ble High Court disposed the petition given directed to defendant no.14, 16 and 17 to report the same. The defendant no.4 fixed iron gate to his property for protection of his property. There is no road in land Sy.no.135/1B meg 0-15-8. there is another road through small gate to the villagers to reach seashore, hence the application filed by the plaintiffs is

not maintainable one. The plaintiffs not mentioned the survey number in which the gate was fixed. There is no road to reach the seashore, but the plaintiffs produced created hand sketch showing the road, there is no such road in suit property. The defendant no.1 to 5 filed application before Ministry of Environment, Forest and Climate Change, Regional office, Kendriya Sadan, Koramanagala, Bangaluru, the said office passed the order dated 05.11.2024 on several conditions, and as per one of the conditions the first defendant gifted his lands in Sy.no.133/6 meg 0-15-12, Sy.no.133/7 meg 0-9-8, Sy.no.133/8 meg 1-4-12 and Sy.no.133/9B meg 0-16-8 in the name of Governor of Karnataka infavour of forest conservation officer, Honnavar, the said gift deed registered in Doct. no.MR.No.H16/2025-2026, on the basis of which the name of forest entered in revenue records. Other than that the defendant no.1 paid the compensation of Rs.34,15,194/- to the government. Hence the government provided road to his property. But the plaintiffs are filing complaint against these defendants only to harass them. In its order the Ministry of Environment, Forest and Climate Change clearly mentioned that

the defendant no.1 not restrained the other users of road situated in forest land Sy.no.130A, hence by improvement of said road not only these defendants but the other villagers are also benefited by the same. The defendant no.1 to 5 not hold any control over the said road, the truth will not come out only by perusal of photo's, the defendant no.1 following the conditions issued in his permission, and moreover other than suit road the plaintiffs got alternative roads, hence the application is not deserves to be allowed.

7. Earlier there was no road in the forest Sy.no.130A but after order of Central Government the property meg.0.9896 is given in Sy.No.130A the same can be used by the plaintiffs also. Knowing fully well but the plaintiffs filed this suit and application against these defendant no.1 to 5. the Hon'ble High Court of karnataka ordered in W.P.No.103726/2021 and the Tahasildar Kumta in its order given clear clarification that there is no road in the property of defendants. Hence the plaintiffs not made out prima facie case, no balance of convenience lies in

their favour, hence if the application is not allowed no hardship caused to the plaintiff hence prays to dismiss the application.

8. 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.

9. Upon hearing arguments and on perusal of materials placed on record the following points that would arises 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?

10. My findings to the above points are as under.

Point No.1 - In the Negative.

Point No.2 - In the Negative.

Point No.3 - In the Negative.

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

### **REASONS**

11. **Point No.1 TO 3** : This is a suit filed by the plaintiffs for injunction, as the defendant no.1 to 5 restraining the villagers from using the public road.

12. The road passing through land Sy.No.No.135/1, is a public road, the plaintiffs and villagers of Kirubele are using the said road time immemorial. The said road reaches to Gurumath, grave yard and seashore. The said road developed by the Kagal Gram Panchayat by leveling the said path which is existing in the form of jerry. Now they are permitting to use the said road to private persons, who are not restraining the villagers from using the road. Plaintiffs made several representations to the defendant no.6 to 24 for removal of said encroachment of the road by the encroaches. But the government officials have not taken any steps for removal of

encroachment that is iron gate, and the inaction on the part of the defendants would clearly indicates that there is collusion between the defendant no.1 to 5 and the authorities. It is obligation on the part of defendant no.6 to 24 to take appropriate steps for projecting the road on 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) Nno.3109/2011 (arising out of special leave petitions (Civil) C.C.No.19869/20100 directed all Chief Secretaries of the states and union territories in India who will ensure strict and prompt compliances of the order and to submit compliance reports to the Apex court from time to time and the defendants have failed in discharging their statutory duties and not complied the order and it is the duty of the respondents to remove the encroach and clear the roads for use of the abutting owners for whose benefits the roads have been formed.

13. Hence they have filed this suit before this court 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 no.1 to 5 obstructing the plaintiffs and other villagers from passing through said road, hence they have filed an interim application, praying for an interim injunction against the defendant No.1 to 5 and their representatives, until the disposal of this suit, so that they do not interfere in any way with their right of way.

14. Suit schedule Road is the only connecting road for the residents the devotees going to the religious pilgrimage centers of Guru Math and Jatagan Devasthala in Kirubele and to Kagalkote in Kirubele itself, which is also a public road. Said Road is also the only connecting road to the Malki fields purchased by the defendant No.1 to 5. Said Road also connects to two crematoriums. Said Road starts from the main road going from Kumta to Aghanashini, Malki Survey No.; 160 and passes through Forest Survey No.; 130A, and as it enters, it is the only connecting road to the crematorium land for the people of Kagal village, which is about 50 meters away. 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. This

matter is a matter of public knowledge to all. However, for the defendant No.1 to 5, the government officials illegally constructed the public road for the purpose of their properties 1st respondent company's premises. And they are giving permission to build a road to the hotel. In this way, 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 and went to the sea shore, saying that there is no road there, and have put up an iron gate on the way to the sea shore. In this regard, a written complaint along with documents has been submitted to the attention of 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 road and now if it is handed over to private use, it will be a betrayal of the government treasury and the taxi money of the citizens.

15. The 1st defendant company is a company established for the purpose of conducting tourism and on behalf of the Said company, 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 change the forest road to and from the destination for the development of the destination and specify a separate road. 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. Therefore, none of you can travel on this road anymore and they will come and build the road. And you should find another way to travel, the 2nd defendant has been repeatedly telling the plaintiffs. Similarly, the remaining 3rd to 5th defendants are also involved in this. The 1st to 5th defendants have already purchased many Malki Survey numbers at low prices in collusion with each other and are trying to purchase the Malki Survey numbers belonging to the

plaintiff's family. When it became clear that the plaintiffs would not be willing to give their Malki Survey numbers, the 1st to 5th defendants have been 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, and by obstructing the plaintiffs from moving around on the suit road. Already, the Forest Officers, ignoring the right of the suit public road that has existed since the British era, have completed the survey work and have even marked it in the process of giving the Said suit road to the defendants for private use. In lieu thereof, the 1st to 3rd respondents shall acquire 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, in the form of donation and a "11E" map shall also be prepared in this regard. And the process of registration of the donation deed shall also be carried out.

16. The plaintiffs have been using the suit Road since time immemorial. Now, by handing over the Said suit Road to private parties, the plaintiffs rights will be taken away. In this way, by

giving the suit Road, which the plaintiffs have the "right of way", to private parties, the plaintiffs suit Road will be closed. If the right to roam, which has existed since time immemorial, is curtailed and taken away, it will be very difficult for the plaintiffs to carry their belongings. To come to the market to take their daily necessities. To go to the hostel, to go to school and colleges for their children. Neither the 1st to 5th defendants nor the 6th to 25th defendants, the government officials, have any right to curtail or take away the right of enjoyment of the plaintiffs on the suit road, or to obstruct it. The 1st plaintiff had written a letter to the 6th defendant dated 27-1-2025 along with the necessary documents, requesting cancellation of the first stage permit granted to the 1st defendant company. A letter was also sent from the 6th defendant to the 8th defendant in this regard. However, no action has been taken. 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 Kagal, which is the subject of the suit.

17. Since this case is taking a long time to resolve, Plaintiffs are entitled to a temporary injunction against the 1st to 5th defendants and their representatives, so that their right of way on the road may be obstructed and they may not be able to move around on the road. They are entitled to a temporary injunction against the 1st to 5th defendants and their representatives, so that their right of way on the road may not be obstructed in any way. They have prima facie case and balance of rights to obtain an order in this suit and this interlocutory application against the defendants.

18. If an interim injunction is granted against the 1st to 5th respondents and their representatives until this suit is disposed of, the respondent will not suffer any injustice or inconvenience. If the interim application is not granted, their daily activities as the petitioners will come to a standstill, school children will not be able to go to school and their education will be affected, and the sick will not be able to go to the hospital. They will suffer an injustice and inconvenience that they cannot afford.

19. The purchase of property by defendant no.1 to 5 in land Sy.no.135/1B is not in dispute. Now the dispute is with respect to road situated in suit property. It is the contention of plaintiffs that it is a public road, using by plaintiffs and Kirubele villagers from time immemorial, now the defendant no.1 to 5 closed the said road by placing the iron gate. But it is the contention of defendant no.1 to 5 they have fixed gate to protect their property. Hence in this case, whether the road is a public road, and the plaintiffs are villagers using the same from time immemorial is a matter of trial.

20. By filing this application plaintiffs prays to pass an injunction order directing the defendant no.1 to 5 to remove the iron gate. But the defendant no.1 to 5 placed gate property purchased by them. The question that the plaintiff are using said road time immemorial and except the said road there is no other alternative road is a matter of trial.

21. In this case, though it is the contention of defendant no.1 to 5 that they put gate to their property to protect their land. But defendant no.1 to 5 not to forget that the Ministry of

Environment, Forest and Climate Change, Regional Office, Kormangala, Bangalore given approval for construction of Resort on some conditions, and among which one of the condition is that, the legal right of any other users of the proposed road shall not be obstructed by the User Agency and the Forest Department shall be the final authority in determining and regulation of usage of the said road. The User Agency shall furnish and undertaking to this effect.

22. Further the defendant no.1 to 5 through their GPA holder have undertaken that they will not restrain the villagers, from using the road. Hence they are bound by it.

23. In W.P.No.103726 OF 2021(GM-RES) the Hon'ble High Court of Karnataka directed the Respondents that is the Deputy Commissioner, Uttara Kannada, The Assistant Commissioner, Kumta, Sub-Division, Kumta and The Tahasildar, Kumta to consider the representations dated 16.04.2021 at Annexures-E and H respectively and pass appropriate order in accordance with law. And the same respondents are defendant no.14, 16 and 17 in this present suit, who appeared through Assistant

Government Pleader. Now they appeared and filed their written statements. Hence as the defendant no.14, 16 and 17 are on record, and to submit whether they have considered the representation dated 16.04.2021 or not, and what are the steps taken by them. The government has given permission to defendant no.1 to 5 on some conditions. Also given direction to defendant no.14, 16 and 17 to consider the grievance of villagers/plaintiffs. As the defendant no.1 to 5 erected iron gate to their purchased property. Hence to know whether the defendant no.1 to 5 obstructing the plaintiffs by using the road erecting the iron gate, whether it is public road and plaintiffs using the road by time immemorial and there is no alternative road to plaintiffs to reach seashore. Whether the defendants, 14, 16 and 17 considered the grievance of villagers, and what steps the defendants have taken, and whether the defendants no.1 1 to 5 abide by the conditions of permission, are to be considered at the time of trial. Hence this court opined that at this stage the application filed by plaintiffs is not deserves to be allowed. Hence if the application is allowed hardship caused to the defendants

no.1 to 5 as they have purchased the property and they are the owner and in possession and enjoyment of their property.

24. Considering the over all circumstances of the case and undisputed facts emanates from the pleading and documents produced by the plaintiffs and defendants, if the application is not allowed no hardship caused to the plaintiffs. Hence this court is of the considered opinion that, plaintiffs failed to established prima facie case, balance of convenience tilts in their favour. Hence **Point No.1 to 3 answered in the Negative.**

25. **Point No.4:** In view of my findings on point No.1 to 3, I proceed to pass the following:

**ORDER**

I.A.No. V filed by the plaintiffs  
against the defendant No.1 to 5 Under  
Order XXXIX Rule 1 and 2 R/w Section  
151 of CPC is hereby dismissed.

(Dictated to the stenographer, transcribed by her, then corrected and pronounced by me in the open Court on this the 4th day of April, 2026)

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