

**IN THE COURT OF THE CIVIL JUDGE & JMFC, AT
SIDDAPUR.**

PRESENT

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,
CIVIL JUDGE & JMFC,
SIDDAPUR.**

Dated this the 11th day of November, 2024

O.S. No.18/2023

Plaintiff: Manjunath Parameshwar Hegde

(By Shri R S H Adv.)

V/s

Defendants: Shridhar Ramachandra Hegde

(By Shri G S H /M N H Adv.)

I.A.No.I

Applicant : Manjunath Parameshwar Hegde

V/s

Opponent: Shridhar Ramachandra Hegde

ORDER ON I.A.NO.I FILED UNDER ORDER 39 RULE 1**AND 2 C.P.C.**

The plaintiff has filed this application, seeking this Court to issue an order of temporary injunction, restraining the defendants from closing the suit schedule road at B C D points as shown in the rough sketch annexed to the plaint, pending disposal of the suit.

2. In the accompanying affidavit, the plaintiff has sworn to the following averments :

In the affidavit filed in support of I.A. No. I, the plaintiff states that in the rough sketch annexed to the plaint, the portion marked as "X" represents the plaintiff's house, the portion marked as "Y" represents the defendant's house, and the area marked as A, B, C, D, E is the suit schedule road. The plaintiff further states that the only available road, i.e., the suit schedule road, for reaching his house can be seen on Google Maps. The plaintiff, the defendants, and other privilege holders of Sy. No. 183 have been using the suit schedule road, which runs from the public tar road through the forest Sy. No. 183, to access their bhagayath lands and transport the products derived from the forest land. The plaintiff adds that there is only one mud road, 750 meters in length and 25 feet in width, which connects the public road to both the plaintiff's and the defendant's houses, passing through Sy. No. 183. The defendants, however, are interfering with the plaintiff's use of this road at points B, C, and D, as shown in the rough sketch. The plaintiff also states that no work has been undertaken by him to widen the road in the past 10 years. On 1-2-2023, while transporting agricultural equipment and fertilizers, the plaintiff and his family were

again obstructed by the defendants at points B, C, and D on the suit schedule road. Consequently, the plaintiff and others using the road made a representation to the Gram Panchayat of Harsikatta on 2-2-2023, seeking relief. The plaintiff asserts that he and his family have been using the suit schedule road continuously for over 50 years and, as a result, have an easementary right over it. Moreover, the suit schedule road is the only road available for the plaintiff to reach his bhagayath land at Survey No. 177/3 and Sy. No. 2/1. Additionally, the plaintiff claims a privilege over the betta land of Sy. No. 183. Given these circumstances, the plaintiff contends that the defendant is attempting to close the suit schedule road, prompting the filing of this application.

3) On the other hand, the defendants contend that the rough sketch annexed to the plaint does not reflect the actual facts. They state that on the eastern side of the tar road, leading towards Honnehadda, the houses of both the plaintiff and the defendants are located. From the tar road, a 3-meter-wide mud road runs towards their houses. On the southern side of this road, there is a trench, and after crossing it, their houses are situated. The defendants further assert that the mud road passes the trench on the southern side and connects to the gate of the defendants' compound wall. The road then turns westward and reaches the plaintiff's house, maintaining a width of 3 meters. The defendants claim that on both sides of the road, running from the gate of the defendants' house to the gate of the plaintiff's house, the land in possession of the defendants is situated. They also state that on the southern side of the plaintiff's gate, there is a passage leading to the garden, and on the western side of this

passage, the defendants have constructed a compound. The Defendant, in turn, has built a compound on both sides of the road from the defendants' gate to the plaintiff's gate. In light of these facts, the defendants seek the dismissal of the application.

4) Upon perusal of the applications, objections and the material available on record, the following points arise for my consideration:-

- 1)** Whether the plaintiff has made out a prima facie case?
- 2)** Whether the balance of convenience lies in the favour of plaintiff?
- 3)** Whether the plaintiff will be put to irreparable loss or hardship, if injunction is not granted?
- 4)** What order?

5) Heard the arguments and perused materials on the record.

6) My answer to 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 final order, for the following.

REASONS

7) Point No.1 to 3: As these points are interconnected, this court has taken them up together for a common discussion, in order to avoid repetition of facts and circumstances and for the sake of brevity. Since the averments in the affidavit annexed to the application and the objections of the defendant have been detailed at the outset of this order, this court will proceed to assess the facts and circumstances on record, without reiterating them, by applying the three established principles for granting a temporary injunction.

8) It is undisputed that both the plaintiff and the defendants have privileges over the betta land bearing Sy. No. 183. It is also not in dispute that both parties own houses on the said betta land. Additionally, it is not in dispute that there is a mud road running from the public tar road to Sy. No. 183. The only point of contention is the description of the road as depicted by the plaintiff in the sketch annexed to the plaint.

9) A privilege over betta land is typically granted to the bhagayath landholders of certain survey numbers, allowing them to derive benefits from the betta land, such as collecting dry leaves, soil, and other materials to use in the development of their bhagayath lands. A single betta land is usually shared by several survey numbers, with all bhagayath landholders having equal rights over the entire betta land. This betta land cannot be divided among them by metes and bounds. Furthermore, bhagayath landholders are not permitted to build

houses or construct compound walls around their houses, thereby converting the betta land into their exclusive private property.

10) In this case, both the plaintiff and the defendants, who were granted privileges over the betta land in Sy. No. 183, have constructed houses and erected compound walls around them, instead of utilizing the betta land to derive benefits for the development of their bhagayath lands. Now, within these compound walls, the plaintiff and the defendants are making conflicting claims regarding the description of the road. However, the fact remains that a road exists, running from the public tar road to their houses, with the dispute solely regarding its description.

11) The defendants cannot claim exclusive possession and enjoyment of any portion of the betta land, thereby preventing other privileged landholders from asserting their rights over that portion. No one can interfere with this right. In the present case, the defendants assert that they have built a compound wall on either side of the road running between their gate and the plaintiff's gate, and have made certain developments along the road. They also claim that the road is only 3 meters in width, and that a passage exists to the southern side of the plaintiff's gate leading to the plaintiff's bhagayath land. These contentions, in themselves, infringe upon the fundamental purpose for which the privilege over the betta land was granted.

12) Nevertheless, the exact description of the suit schedule road will need to be adjudicated at trial and cannot be conclusively determined at this stage. Based on the facts at hand, this court is of the firm

opinion that the plaintiff has made out a prima facie case. Furthermore, since this is the only road available for the plaintiff to reach his house and bhagayath lands, any obstruction or blockage of the road, as alleged by the plaintiff, would cause irreparable loss and inconvenience to the plaintiff. Accordingly, this court answers **Points No. 1 to 3** in the **AFFIRMATIVE**.

13) Point. No. 4: In view of above discussion and the answer given to Point No.1 to 3, this court proceeds to pass the following:

ORDER

I.A. No. I filed by the Plaintiff, Under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908, is hereby allowed.

The defendants are hereby restrained from closing the suit schedule road at B C D points as shown in the rough sketch annexed to the plaint till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court, on this 12th day of November 2024)

(BHARATH CHANDRA K.S.)
CIVIL JUDGE & JMFC,
SIDDAPUR.

