

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT KUNDAPURA**

Present : SMT. MANJULA B., *B.A.L., LL.B.*
Prl. Civil Judge & J.M.F.C.,
Kundapura.

Dated this the 3rd day of May, 2025

Original Suit No. 302/2024

Parties to I.A. No. II:

- Applicant/s:**
- 1) Smt. Vanitha Shetty, 36 years,
D/o Smt. Vanaja Shedthi.
 - 2) Minor Sanvi Prasad, 9 years,
No.2 is the daughter of No.1
and is represented by her
guardian mother and next
friend No.1 above, both are
residing at Arebailu,
Thekkatte Village and Post,
Kundapura Taluk.

(By Advocate Sri. N.S.R.B.)

//Vs//

- Opponent/s:**
- 1) Smt. Gulabi Shedthi, 73 years,
D/o Late Kaveri Shedthi,
 - 2) Sri. Vasudeva Shetty, 52 years,
 - 3) Sri. Rajeeva Shetty, 50 years,
 - 4) Sri. Umesh Shetty, 48 years,

Nos. 2 to 4 are children of
No.1 above,
All are residing at Arebailu,
Thekkatte Village and Post,
Kundapura Taluk.

(By Advocate Sri. M.J.S.)

Parties to the suit:

Plaintiff/s : 1) Smt. Vanitha Shetty and another

V/s

Defendant/s: 1) Smt. Gulabi Shedthi and others

i.	Provision under which the application is filed	Order XXXIX Rules 1 & 2 R/w Sec. 151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	10/12/2024
iv.	Number of the application	I.A. No. II
v.	The date on which the objections are filed by different opponents	24/03/2025
vi.	The date on which the orders were passed on the said application	03/05/2025

(Manjula B.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.

:: ORDERS ON I. A. NO. II ::

The Plaintiffs filed this application for grant of temporary injunction to;

- a) Restrain the Defendants, their agents, henchmen etc., from forcibly causing obstructions to the user of the suit "ABCD" road or
- b) From blocking, obstructing, diminishing, destroying or damaging the existing suit "ABCD" road starting from the eastern Panchayath road running toward west or
- c) Preventing the Plaintiffs in any way from using the Suit "ABCD" road and thereby from forcibly encroaching any portion of the suit "ABCD" road from any of its sides and thereby from changing the present landscape or topography of the suit "ABCD" Road in any manner and thereby committing any nuisance or causing any harm waste or damage to the suit "ABCD" road and thereby from interfering with the peaceful user, possession and enjoyment of the suit "ABCD" road by the Plaintiff, till disposal of the suit,

- 2) In the affidavit annexed to the application, Plaintiffs have stated that, they are the absolute owners in lawful possession and enjoyment of Suit 'A' Schedule Property. Originally Suit 'A' Schedule Property and other properties were the tenanted properties of the family of one Kaveri Shedthi. Family members of this Kaveri Shedthi having joined together and have orally divided certain properties amongst their branches, as per which major properties were got divided amongst the children of Kaveri Shedthi in the year 1970-71. **They started enjoying their respective divided share of properties were jointly held by them by reserving the right of access from one property to other** in order to have ingress and egress to the share of properties from one share to another. It is averred that after coming into force of the Karnataka Land Reforms Act, the 4 daughters of the said Kaveri Shedthi namely 1) Gulabi Shedthi, 2) Sadhu Shedthi, 3) Parvathi Shedthi & 4) Laxmi Shedthi have filed separate

declaration in respect of their respective share of properties as per the oral partition thus entered to amongst them as aforesaid and in respect of the joint properties thus held by them, all of them have filed declaration in respect of those jointly held properties also. Accordingly the Additional Land Tribunal, Kundapura has considered the applications of all these applicants. **Accordingly the grandmother of Plaintiff No.1 namely Smt. Sadhu Shedthi was granted totally 0.78 acres of land in Sy. No. 4/3B1 of Thekkatte Village vide the proceedings in TRI No. 4138/77-78** and even the jointly held properties were granted jointly in the names of the said 4 persons. Accordingly the Tahsildar, Kundapura has issued Form No. 10 certificate in the name of the said Sadhu Shedthi on 10/03/1980.

- 3) It is averred that, the said Sadhu @ Sadamma Shedthi and her branch family members having joined together, have entered into a registered partition deed on 09/01/2019, as per which

'B' Schedule Property of this partition deed which was then sub-divided as S.No.4/17 from its initial SD No.4/3B1 was allotted to the branch of Smt. Vanaja Shedthi, the mother of Plaintiff No.1, as per which the RTC of this Property stood mutated in the name of Vanaja Shedthi. **That thereafter the said Vanaja Shedthi and her branch family members viz., the Plaintiffs having joined together, have entered into a registered partition deed dated: 19/02/2021, as per which the suit 'A' Schedule property has been allotted to the share of the Plaintiffs. That thereafter the Plaintiffs got converted this property for residential purposes vide order of the D.C., Udupi dated: 18/05/2022 and obtained Khatha vide Form No.9 & 11A from Thekkatte.**

- 4) It is averred that, **as per the oral partition thus entered into amongst the children of Kaveri Shedthi, even 1st Defendant has also filed declaration before the Land Tribunal, Kundapura in respect of her share of properties**

bearing S. No.4/3B1, as per which she was granted totally 0.70 acres of land of Thekkatte Village as per TRI No.4137/1977-78. She was enjoying this property separately along with her branch family members and now the same has been sub-divided into 3 portion as per the plotting proceedings got done amongst them. But the Suit 'B' Schedule Property is situated to the immediate east of the Suit 'A' Schedule Property and is adjoining the eastern panchayath road and the other 2 portions of this sub-division are situated to the west of Suit 'A' Schedule Properties.

- 5) It is averred that there runs NH-66 to the west of the suit properties which is running north-south and from this NH-66 there runs a Panchayath road towards east called Maladi Road and from this Maladi Road, a deviating road starts and runs towards south which road is also given up to the Thekkatte Grama Panchayath and as such this road has become a Panchayath road now which is of a width about

15 ft. that even for the formation of this road, the family members of the Plaintiffs and Defendants viz., Sadamma Shedthi, Laxmi Shedthi and Parvathi Shedthi have also given up their respective portion of properties to Thekkatte Grama Panchayath for the formation of this Panchayath road and accordingly the Panchayath road is formed which is running from north to south.

- 6) It is averred that at about the middle of this Panchayath Road there is a slight curve and at this portion to the west of this Panchayath road the Suit 'B' Schedule Property belonging to the Defendants is situated and to the immediate west of the Suit 'B' Schedule Property, the Suit 'A' Schedule Property allotted to the Plaintiffs is situate and in order to reach the Suit 'A' Schedule Property, there has been a mud road of a width of about 12 to 14 feet at the southern portion of the Suit 'B' Schedule Property running from east to west to reach the Suit 'A' Schedule Property, which road directly leads to the

Suit 'A' Schedule Property and also proceeds further towards west. That, even apart of this share of properties of Sumathi Shedthi D/o Sadamma Shedthi is situated to the immediate west of the Suit 'A' Schedule Property and also the share of Sadamma Shedthi is situate to the west of this property and both these Sadamma Shedthi and Sumathi Shedthi are the divided family members of the Plaintiffs and Defendants. That subsequently the said Sadamma Shedthi has sold her such portion of property to one Vishalakshi Shedthi and even in order to reach the plots of this Vishalakshi Shedthi and Sumathi Shedthi, a road is also reserved to them starting from the aforesaid eastern Panchayath road and running through and across the Suit 'B' Schedule Property at its southern portion as aforesaid and this road even leads to the properties of Sumathi Shedthi and Vishalakshi Shedthi, which road also passes at the southern side of the Suit 'A' Schedule Property. **That even the formation of this road is also**

clearly demarcated in 11E Sketch attached to partition deed dated: 09/01/2019 entered into in the family of the said Sadhu Shedthi @ Sadamma Shedthi. That thus it is certain and evident that starting from the eastern Panchayath Road, there has been a road of a width of about 12 to 14 feet running over the southern portion of the Suit 'B' Schedule Property from east to west, which road continues further as shown in the said partition deed dated: 09/01/2019.

- 7) It is averred that priorly both the Suit 'A' and 'B' Schedule Properties belonged to the common joint family and after such division as aforesaid amongst the joint family members, the suit 'ABCD' road has been reserved to reach the Suit 'A' Schedule Property as well as the other portion of properties allotted to the share of Sadamma Shedthi as aforesaid. Even apart of this the Suit 'ABCD' road has been and is the only and only road to reach the Suit 'A' Schedule Property from the town through the aforesaid Panchayath road and

Suit 'B' Schedule Property and except this 'ABCD' road, the Plaintiffs have no access to reach the town from the Suit 'A' Schedule Property and vice-versa. That this neither the Defendants nor any other persons have the right to obstruct or cause any sort of interference or disturbance in the matter of user and enjoyment of the suit 'ABCD' road to reach the Suit 'A' Schedule Property. That except the suit 'ABCD' road, the Plaintiffs and her family members have no other access or road to reach the Suit 'A' Schedule Property, which road is also being used by the western side resident of that locality. Even apart of this the Plaintiffs have been constructing a residential house over the Suit 'A' Schedule Property and it is completed **up to the lintel level and the construction work is still going on and the Plaintiff have been transporting all the building materials to the Suit 'A' Schedule Property through said Panchayath road and the suit 'ABCD' road running over and across the southern portion of the Suit 'B' Schedule Property as aforesaid.**

- 8) It is averred that, the Plaintiffs' family members have been using the Suit 'A' Schedule Property **since the time of the said Sadamma Shedthi as per the terms of the oral partition thus entered into in the family in the year 1970-71 and earlier there was a shed over the Suit 'A' Schedule Property, which is being used by the Ancestors of the Plaintiffs and now by the Plaintiffs and even they have been constructing the residential house as aforesaid.** That there is no fencing around the Suit 'A' Schedule Property and it is open. **Further even the Plaintiffs are also applying for the appointment of Court Commissioner for proper identification and demarcation of suit 'ABCD' road and after the report of the Court Commissioner,** they are hereby reserving their right to get the amended the Plaint if required.
- 9) It is averred that, as per the terms of the said oral partition, and as per the mutual understandings, 1st Defendant has left

12 to 14 feet width road at the southern boundary of the Suit 'B' Schedule Property since year 1970-71 and since there has been a road of width of about 12 to 14 feet and as such the Plaintiffs erstwhile family members and now the Plaintiffs have been and are using the suit road starting from the eastern Panchayath road. That the suit road is the only approach road to reach the Suit 'A' Schedule Property of the Plaintiffs, which proceeds further towards west as aforesaid and is being used by the Plaintiffs regularly and continuously to reach the Suit 'A' Schedule Property. This suit road has been in existence since the year 1970-71 and nobody have objected or obstructed the user of the suit road by the Plaintiffs and their erstwhile family members for all these years. That even Defendant No. 1 had given an express grant in respect of the Suit road passing over and across the Suit 'B' Schedule Property and thus ever since then even the Plaintiffs then family members have been using the suit road and have thus acquired easementary right by grant also.

10) It is averred that the Plaintiffs and their erstwhile family members have been using the suit road since the year 1970-71 continuously, without any obstructions or interference from anybody including the Defendants or any persons claiming under them and have thus acquired the prescriptive right of easement over the suit road passing over and across the Suit 'B' Schedule Property to reach the town from the Suit 'A' Schedule Property also and also on mamool right of easement. That the Plaintiffs and their erstwhile family members have been using this suit road as an easement of necessity also. That the Plaintiffs since the time of their ancestors have no other alternative pathway or road to have access to the town and the suit road is the only approach road to them to reach the Suit 'A' Schedule Property.

11) It is averred that, at any event the Defendants have no right of whatsoever nature to obstruct or diminish or destroy the existing suit road running over and across and through the

Suit 'B' Schedule Property as aforesaid. That this suit road is also demarcated in the rough eye sketch produced herewith. The Plaintiffs and their family members have been using the suit road on mamool and prescriptive right and also easement by grant and also on easement of necessity.

- 12) It is averred that, as the matter stood thus the Defendants, having joined together, have started collecting material for constructing a compound wall around the Suit 'B' Schedule Property by blocking the suit 'ABCD' road and when this was observed by Plaintiff No.1, she questioned the Defendants on 07/12/2024 and requested them not to block the suit 'ABCD' road and then the Defendants started demanding with the Plaintiffs that the Plaintiffs should pay them Rs. 2,00,000/- in order to retain that road which passes over their Suit 'B' Schedule Property. So as to reserve that road to have that road to be used by the Plaintiffs for their ingress and egress without which threatened to completely close down the suit

road by constructing compound wall around the Suit 'B' Schedule Property even by covering the suit road, for this the Plaintiffs and the husband of Plaintiff No.1 Vijay Kumar has turned down their request as it is a road that has been reserved as per the terms of the oral partition as aforesaid. Enraged at this the Defendants made an attempt to block the suit road by digging trenches over the eastern boundary of the Suit 'B' Schedule Property at which place the suit road runs on 08/12/2024 and by getting scent of the same, the Plaintiffs and the said Vijay Kumar prevented the Defendant from digging trenches or from constructing such compound wall forcibly by digging trenches across such suit road. But thought the Defendants have given up such high-handed acts temporarily, they started proclaiming that come what may, they would forcibly close down the suit road and block it, passing over their land, with much force of men and materials if the Plaintiffs does not pay the aforesaid amount

to them within 8 days. This has been strongly resisted and opposed by the Plaintiffs on that day. But as the Defendants are backed by money and muscle power, the Plaintiffs are not in a position to physically prevent them from doing such high-handed and illegal acts as threatened by them. So the danger to the suit 'ABCD' road from the hand of the Defendants is imminent. In case the Defendants put their threats into action, certainly the Plaintiffs and their family members would be put to irreparable injury, inconvenience and hardship that cannot be compensated in terms of damages. Hence filed this suit along with this application.

- 13) On the other hand Defendant No.1 by way of filing written statement denied all the material averments found in plaint and ought to have denied the existence of 12 to 14 feet width road over any portion of Suit 'B' Schedule Property. It is contended that the Plaintiff with an intention of forming new road has filed this suit by suppressing the material facts. Hence prays to dismiss the suit as well as the application.

14) It is contended by the Defendant No.1 that, 'B' Schedule Property is absolutely belong to the Defendants and said entire property is and has been in exclusive possession and enjoyment of Defendants and other members of their family. That the northern portion of Suit 'B' Schedule Property is the house site in which the residential house building, cattle shed, well, thrashing yard, coconut and other varieties of tree growths belong to the Defendants are situated. **That to the knowledge of Plaintiff southern portion of 'B' Schedule Property is and has been paddy field in which the Defendant and their family members are have been raising paddy and other crops.** That the neighboring landholders of this Defendant namely one Mr. Arun Kumar Shetty, Venkata Mogera, Jayaram Shetty and others about 10 years back from now got formed a new road over and above the properties of different persons including the above named Venkata Mogera, Arun Kumar Shetty and others and

next to the property of Arun Kumar Shetty towards its south, the Suit 'B' Schedule Property of this Defendant is situated and the road got formed by above said persons was runs upto the above said property of Arun Kumar Shetty.

- 15) It is averred that at that point of time, this Defendant and above named Jayaram Shetty who owned property on the southern side of suit 'B' schedule property were requested above named Arun Kumar Shetty and his wife Shanthi Shedthi to leave a portion of their above said property in the easternmost portion of their land to form a mud road leading to the 'B' Schedule property for which above said persons were agreed and accordingly this Defendant and above named Jayarama Shetty got formed a new road in the portion of property of said Arun Kumar Shetty and Shanthi Shedthi.

It is relevant to note that this Defendant also allowed above named Jayarama Shetty to form a new road over and above the southernmost portion of Suit 'B' Schedule

Property leading to the house site property of said Jayarama Shetty and this road is formed over and above easternmost portion of 'B' Schedule Property in continuation of road formed over and above property of Arun Kumar Shetty above named and as such the said mud road runs upto the courtyard of house site of above said Jayarama Shetty. That on the southern portion of Suit 'B' Schedule Property there exist a field ridge which runs east-west and absolutely there is no road much less road of 12 to 14 feet width as falsely and fraudulently claimed by the Plaintiffs in the suit. If at all any commission for local inspection is taken out the above said true facts will come to light. As a matter of fact the Suit 'A' Schedule Property is also paddy field in which the Plaintiff No.1, her predecessors and family members are/ were raising paddy and other crops till recently and in between the Suit 'A' Schedule Property and Suit 'B' Schedule Property there exists a field ridge and Suit 'A'

Schedule Property is enclosed with field ridge and on other side also. The Plaintiff No.1 and her people a few months ago have started making preparations to construct a building in the portion of 'A' Schedule property and only foundation of house building is constructed in the said land. The Plaintiff No.1 and her mother also got put up a temporary shed in the portion of said land recently and the various contentions taken by Plaintiff in plaint regarding the topography of 'A' Schedule property and also alleged structures in the said land are false and misleading. The Plaintiff No.1 and her predecessors also are and have been using the field bunds of agricultural fields situated on the north of Suit 'A' Schedule Property belong to others and absolutely there are pathway or road on any portion of Suit 'B' Schedule Property to reach the 'A' Schedule Property as falsely claimed by the Plaintiffs in the Suit. The Plaintiff No.1 and her people with an malafide intention of forming a new road over and above the Suit 'B'

Schedule Property illegally and highhandedly if possible, filed the above suit suppressing all true and material facts and now being armed with exparte order of injunction obtained in above suit, the Plaintiff No.1 and her people are and have been making hectic preparations to form a new road over the Suit 'B' Schedule Property and their said attitude is highly illegal and unauthorized. Hence it is clear that the intention behind filing suit is malafide.

- 16) It is averred that the suit is not properly filed and not properly presented and suit in the present form is not maintainable. The Plaintiffs are not entitling for any reliefs much less the reliefs claimed. The suit is barred under law. The averments made in I.A.No.II and affidavit annexed to the same is false and misleading. The plaintiff obtained the exparte order of injunction suppressing true and material facts and the Plaintiffs have no case much less prima facie case and balance of convenience is not in their favour. The defendants

are very helpless persons and plaintiff No.1 because of her men and money power taking undue advantage of exparte order of injunction is making hectic attempts to form new road over the suit 'B' Schedule property illegally and highhandedly and therefore the Court may please to dismiss I.A. No. II and vacate exparte order of injunction and otherwise the defendants will put to irreparable loss and hardship. Hence prays to dismiss the application.

17) Heard the arguments from the learned counsel for the parties and perused the documents available on record.

18) Now the points would arise for consideration of this Court are as follows;

:: POINTS ::

1. Whether the Plaintiffs have made out a prima-facie case?
2. Whether the Plaintiffs have balance of convenience in their favour?

3. Who will be put to irreparable loss and injury if the temporary injunction is granted?
4. What order?

19) This Court answers to the above points is as follows;

- Point No.1 : In the Negative
- Point No.2 : In the Negative
- Point No.3 : Defendants
- Point No.4 : As per the final order
for the following ;-

: : R E A S O N S : :

POINT NO.1:

20) The Plaintiffs have filed this suit for the relief of declaration, to declare that, they/Plaintiffs have mamool, easement of ancient, easement of prescriptive, easement of necessity and easement of grant of 12 to 14 feet right of road over southern portion of Suit 'B' Schedule Property. The Prayer of the Plaintiffs, Suit 'A' and Suit 'B' of Plaint schedule is extracted hereunder as follows for ready reference for better appreciation of facts:

Prayer of Plaintiffs:

“For a declaration to declare that the Plaintiffs are having the right to use the suit road of a width of about 12 to 14 feet running over and across the southern portion of suit B Schedule property running from East to West, starting from the Eastern panchayath road, in order to reach the Suit ‘A’ Schedule Property by the Plaintiffs and vice-versa as shown in the rough eye sketch produced herewith, **for the movement of the Plaintiffs and their people and for plying vehicles etc., on a mamool, ancient, prescriptive right of easement and also as an easement of necessity and also by way of easement of grant and the Defendants and their family members have no right to block,** obstruct, diminish or destroy the suit road marked as ‘ABCD’ in the Plaint Eye Sketch and to be correctly demarcated by a court commissioner in a plan to be prepared and for a consequential relief to grant a permanent injunction restraining the defendants, their people, relatives, friends, agents, henchmen, partisans and all persons claiming through or under them from blocking, obstructing, diminishing,

destroying or closing down the suit road and thereby from interfering with the user of the suit road by the Plaintiffs and their people in any manner.

SUIT 'A' SCHEDULE PROPERTY

All that piece and parcel of immovable property bearing Sy. No. 4/21 measuring 0.14 Acres situated at Thekkatte Village, Kundapura Taluk bounded on:-

East by : Land bearing Sy. No. 4/3B1

South : Land bearing Sy. No. 4/17

West : Land bearing Sy. No. 4/20

North : Lands bearing Sy. Nos. 1/3B4 and 3B1

SUIT 'B' SCHEDULE PROPERTY

All that piece and parcel of immovable property bearing Sy. No. 4/3B1 measuring 0.41 Acres situated at Thekkatte Village, Kundapura Taluk bounded on:-

East by : Panchayath Road

South : Pond and lands of Chandrika Shetty and Jayarama Shetty

West : Land of Anoop Prabhu and Suit 'A' Schedule Property

North : Lands of Arun Shetty and Smt. Shanthi Shedthi

21) According to Plaintiffs, they are the absolute owners of Suit 'A' Schedule Property. Defendants are the owners of Suit 'B' Schedule Property. The Suit 'B' Schedule Property is situated immediate east of Suit 'A' Schedule Property. Towards the Southern Portion of Suit 'B' Schedule Property there exists 12 to 14 feet road running east to west from Panchayath road to Suit 'A' Schedule Property. The share of properties of Sumathi Shedthi daughter of Sadamma Shedthi is situated to the immediate west of Suit 'A' Schedule Property and the share of **Sadamma Shedthi is situated to the west of Sumathi Shedthi's Property.** Both these Sadamma Shedthi and Sumathi Shedthi are the divided family members of the Plaintiffs and Defendants. It is stated that, Sadamma Shedthi sold her portion of property to one Vishalakshi Shedthi and even in order to reach the plots of this Vishalakshi Shedthi and Sumathi Shedthi a road is also reserved to them starting from the aforesaid eastern Panchayath road and

running through and across the Suit 'B' Schedule Property at its southern portion as aforesaid and this road even leads to the property of Sumathi Shedthi and Vishalakshi

Shedthi. Which road also passes to the southern side of Suit 'A' Schedule Property. The Plaintiffs specifically contended that, formation of this road is clearly demarcated in 11E sketch attached to the Partition deed dated: 09/01/2019 entered into in the family of the said Sadhu Shedthi @ Sadamma Shedthi.

- 22) It is further averred that, originally Suit 'A' Schedule Property and other properties were the tenanted properties of the family of one Kaveri Shedthi. Family members of Smt. Kaveri Shedthi joined together and orally divided certain properties amongst their branch members. As the major portion got divided amongst the children of Kaveri Shedthi in the year 1970-71. They started enjoying their respective divided share separately as per their convenience and certain other

properties were jointly held **by them by reserving the right to access from one property to other in order to have ingress and egress to the share of properties from one share to another.**

23) In support of their case, the Plaintiffs relied on partition deed dated: 09/01/2019 entered into by the family members of Sadu Shedthi @ Sadamma Shedthi along with 11E Sketch and alienation sketch issued by the Office of Tahsildar, Kundapura Taluk at the time of conversion of Suit 'A' Schedule land from agricultural to non-agricultural purposes.

24) On the other hand, the Defendants ought to have denied the existence of 12 to 14 feet road over the southern portion of Suit 'B' Schedule Property. It is contended that, the Plaintiffs and their pre-decessor-in-title are and have been using the filed bunds of agricultural fields situated on the north of Suit 'A' Schedule Property to reach the 'A' Schedule property.

The Plaintiffs suppressed the materials facts. The suit of the Plaintiffs is not maintainable either in law or on facts and circumstance of the case. Hence prays to dismiss the suit as well as application as the same is not maintainable.

25) In support of their defense, Defendants have relied on sketch prepared during TRI Proceeding bearing No. 4137/0977-78 to 1439/1977-78 by the competent authority dated: 03/05/1996 and partition deed of Plaintiffs dated: 09/01/2019.

26) Admittedly there is no dispute between the parties to the suit regarding ownership of Suit 'A' and Suit 'B' Schedule properties. This Court perused the partition deed dated: 09/01/2019, 11E sketch and alination sketch. Typed copy of relevant portion of Page No.3 of partition deed dated: 09/01/2019, scanned copy of 11E Sketch No.16011018722512001 and alienation Sketch bearing No.16011021616400001 is extracted hereunder as follows for ready reference:-

PAGE NO.3 OF PARTITION DEED DATED: 09/01/2019

“ಮತ್ತು ನಮ್ಮ ಪೈಕಿ 1ನೇಯವರಿ ಹಿಲಿಗೆ ವಿಂಗಡಿಸಿದ 'ಎ' ಶೆಡ್ಯೂಲ್ ಆಸ್ತಿಯ ದಕ್ಷಿಣದಲ್ಲಿ 12 ಅಡಿ ಅಗಲದ ಸ್ಥಳವನ್ನು ಪೂರ್ವ-ಪಶ್ಚಿಮವಾಗಿ ರಸ್ತೆಗಾಗಿ ಕಾದಿರಿಸಿದ್ದು, ಎಲ್ಲಾ ಶೆಡ್ಯೂಲ್ ಹಿಲಿದಾರರು ಸದ್ರಿ ರಸ್ತೆಯನ್ನು ಬಳಸಿಕೊಂಡು ಬರಲು ಹಕ್ಕುಳ್ಳವರಾಗಿರುತ್ತಾರೆ.”

ನಮ್ಮ ಪೈಕಿ 1ನೇ ಸಾಧು ಶೆಡ್ಡಿ ಯಾನೆ ಸಾಧಮ್ಮ ಶೆಡ್ಡಿಯವರ ಹಿಲಿಗೆ
ಮಾಡಿ ವಿಂಗಡಿಸಿದ 'ಎ' ಶೆಡ್ಯೂಲ್ ಸ್ಥಿರಾಸ್ತಿಯ ವಿವರ

ಉಡುಪಿ ಜಿಲ್ಲೆ, ಕುಂದಾಪುರ ತಾಲೂಕು ತೆಕ್ಕಟ್ಟೆ ಗ್ರಾಮದ
ಅದಿಭೋಗದ ಹಕ್ಕಿನ ಸ್ಥಿರಾಸ್ತಿ.

ಜ.ನಂ.	ಸ.ನಂ.	ಸ.ಡಿ.ನಂ.	ಕಿಸಂ.	ವಿಸ್ತೀರ್ಣ (ಎ.ಸೆಂ)	ತೀರ್ವೆ (ರೂ.ಪೈ.)
1.	4	17ಲ್ಲಿ	ನಂಜ	0.20	0.50

ಷರಾ: ಸದ್ರಿ ಆಸ್ತಿ ಲಗ್ತು 11E ನಕ್ಷೆ ಸಂಖ್ಯೆ 16011018722512001 ರಲ್ಲಿ ಬ್ಲಾಕ್ ಸಂಖ್ಯೆ 1 ಆಗಿರುತ್ತದೆ. ಸದ್ರಿ ಆಸ್ತಿಯ ದಕ್ಷಿಣದಲ್ಲಿ, ಪೂರ್ವ-ಪಶ್ಚಿಮವಾಗಿ ಒಟ್ಟು 12 ಅಡಿ ಅಗಲದ ಸ್ಥಳವನ್ನು ರಸ್ತೆಗಾಗಿ ಕಾದಿರಿಸಿದೆ.

ಗಡಿ ವಿವರ:

ಉತ್ತರ:	ಸ.ನಂ. 4/15 ಬ್ಲಾಕ್ II, ಬ್ಲಾಕ್ IIIರ ಸ್ಥಳ
ಪೂರ್ವ:	ಸ.ನಂ. 4/3B1, 3B14 ಬ್ಲಾಕ್ IIರ ಸ್ಥಳ
ದಕ್ಷಿಣ:	ಸ.ನಂ. 4/3B10, ಬ್ಲಾಕ್ IVರ ಸ್ಥಳ
ಪಶ್ಚಿಮ:	ಸ.ನಂ. 4/3B5, 3B10ರ ಸ್ಥಳ

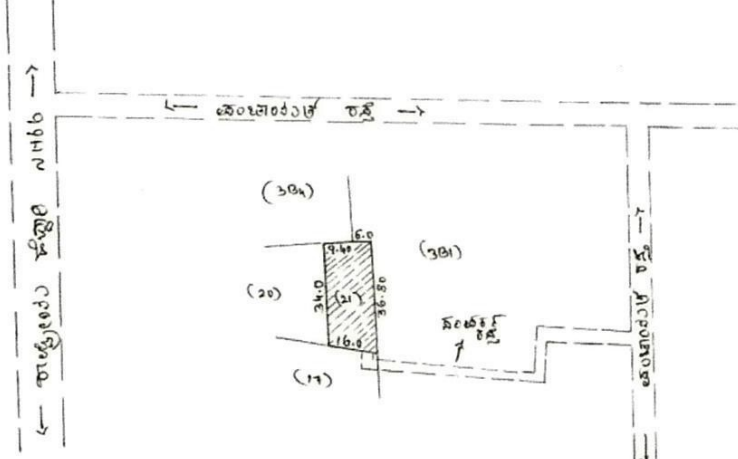
ALIENATION SKETCH No.16011021616400001

Sketch Report All

Page No. 1


ಕರ್ನಾಟಕ ಸರ್ಕಾರ
ತಹಶೀಲ್ದಾರರವರ ಕಛೇರಿ, ಕುಂದಾಪುರ ತಾಲ್ಲೂಕು
ಅಲಿನೇಷನ್ ನಕ್ಷೆ

ಅರ್ಜಿ ಸಂಖ್ಯೆ : 16011021616400 ಸರ್ವೆ ನಂಬರ್ : 4/1/21 ನಕ್ಷೆ ಸಂಖ್ಯೆ : 16011021616400001
 ಜಿಲ್ಲೆ : ಉಡುಪಿ ತಾಲ್ಲೂಕು : ಕುಂದಾಪುರ ಹೋಬಳಿ : ಕುಂದಾಪುರ ಗ್ರಾಮ : ತಕ್ಕಟ್ಟ
 ಅರ್ಜಿದಾರರ ಹೆಸರು : ವನಿತಾ ಶೆಟ್ಟಿ ವಹಿವಾಟು : ಅಲಿನೇಷನ್
 ವಿಳಾಸ : ಉಡುಪಿ, ಕುಂದಾಪುರ, ಕುಂದಾಪುರ, ತಕ್ಕಟ್ಟ



Index: ೧ ನೇ ಸ್ಟ್ರೀಟ್ ರಾಷ್ಟ್ರೀಯ ಹೆದ್ದಾರಿಯಿಂದ (NH66) → 500.0 metre ದೂರದಲ್ಲಿದೆ.

೧) — " — ಎಂ.ಎಚ್.ಎಲ್ ಕೆರೆದಿಂದ → 35.0 metre ದೂರದಲ್ಲಿದೆ.

೨) — " — ಸೊಂಟೆ ಕೆರೆ ಜೊಡಿದೆ

೩) — " — ಸಮುದ್ರದಿಂದ ದೂರವು → ೧.50 km ದೂರದಲ್ಲಿದೆ.

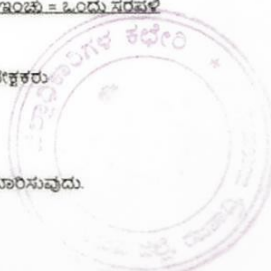
೪) ಹತ್ತಿರದ ಬಸ್ಸಿಂಗ್ ಸ್ಟಾಪ್ ಉಪಯೋಗಕ್ಕೆ ಕೊಡುವ ಫೆಲ್ಡ್.


 ಸಹಿ: ಇಂಚು = ೩೦೦ದ್ದು ಸರಪಳಿ

೧೨. Shetty
 ಆರ್.ಟಿ.ಸಿ.ದಾರರ ಸಹಿ

ಭೂಮಾವಳಿ ಸಂಖ್ಯೆ: 11/02/2021 ತಮಾಸನಾ ಭೂಮಾವಳಕರು ಪರ್ಯಾವೇಶಕರು
ಶಿವಪ್ಪ ದಾಂಗಿ
 ಪರವಾನಗಿ ಭೂಮಾವಳಕರು
 ತಾಂ.ಆ.ಪ.ಭೂ. 28/5261

ಸೂಚನೆ: **ಭೂಮಾವಳಕರು** ಖಾಲಿಯಿರುವ ಜಾಗದಲ್ಲಿ ಅಲಿನೇಷನ್ ನಕ್ಷೆಯನ್ನು ಸ್ವೀಕೃತ ನೋಂದಿಗೆ ತಯಾರಿಸುವುದು.
 • ಲಾಗು ಸರ್ವೆ ನಂಬರುಗಳನ್ನು ದಾಖಲಿಸತಕ್ಕದ್ದು.
 • ನಕ್ಷೆಯು ೧:೫೦ ಅಳತೆಯಲ್ಲಿನಲ್ಲಿ ತಯಾರಿಸಲ್ಪಡುವುದು. ಅದರಲ್ಲಿನ ಅಳತೆಗಳು



https://bhoomojini.karnataka.gov.in/Mojini/NOP/Reports/Sketch_Report_All?AppNo=16011021616400&TypeApp=11E

1

- 27) As per the recital in the partition deed dated:09/01/2019, it is depicts that 12 feet width road is existed in the land bearing Sy. No. 4/17 measuring 0.20 cents of land allotted to the share of one Smt. Sadhu Shedthi @ Sadamma Shedthi. On bare perusal of the said deed, it appears that, 12 feet road running east to west reserved on the southern portion of Sy. No.4/17 and not on Suit 'B' Schedule Property bearing Sy. No. 4/3B1. Absolutely there is no recital, the said 12 to 14 feet road is extended upto the Panchayath road passing through the Suit 'B' Schedule Property from 'A' Schedule Property.
- 28) Even If it is assumed for the sake of argument of learned Counsel for the Plaintiffs that, if the family members of Kaveri Shedthi during oral partition in the year 1970-71 reserved their right of access from one land to another land, definitely there is a recital to that extent in the said deed itself, however, the partition deed is silent about covenant of oral partition for the year 1970-71 and reserving of right to access.

The pleadings and the documents relied on by the Plaintiffs are contrary to each other in this aspect. Even, in the alienation sketch produced by the Plaintiffs in respect of Suit 'A' Schedule Property, though there is recital of connection of road. Whether the said road is existed in the suit 'B' Schedule Property or not is not recited in the said sketch. Moreover, unless and until the author of the said document is examined before the Court, presumption cannot be draw in favour of the Plaintiffs that the said document is genuine one.

- 29) Be that as it may, even in the earlier survey sketch and report produced by the Defendants prepared by the competent authority during TRI proceedings dated: 03/05/1996, there is no recital of existence of 12 to 14 feet road from one portion to another portion as contended by the Plaintiffs in their pleadings. Interestingly in the said report it is specifically recited that, the lands claimed by the Gulabi Shedthi and others are the vacant and un-cultivable lands. The said recital is extracted hereunder as follows:-

"ಸ.ನಂ. 357/3 2.30 ಎಕ್ರೆ ಸ.ನಂ. 1/1B1ಗಳಿಗಿನ ಅರ್ಜಿದಾರರು ಶ್ರೀಮತಿ 1) ಗುಲಾಬಿ ಸೆಡ್ಡಿ 2)ಸಾಧು ಸೆಡ್ಡಿ 3) ಪಾರ್ವತಿ ಸೆಡ್ಡಿ 4) ಲಕ್ಷ್ಮಿ ಸೆಡ್ಡಿಯವರುಗಳ ಡಿಕ್ಲರೇಷನ್ ಕೊಟ್ಟಿದ್ದು ಸ.ನಂ. 357/3ರ ಹಾಡಿ ಪ್ರದೇಶವಾದ್ದು ಅರ್ಜಿದಾರಳಿಗೆ ಪ್ರತ್ಯೇಕ ಗಡಿ ಕಟ್ಟು ಧರೆ ವಗೈರೆ ಯಿರುವುದಿಲ್ಲ ಮತ್ತು ಸ.ನಂ. 1/1B1 18.95 ಎಕ್ರೆ ಹಾಡಿ ಪ್ರದೇಶವಾಗಿದ್ದು ಅರ್ಜಿದಾರಳಿಗೂ ಭೂಮಾಲಿಕರಿಗೂ ಪ್ರತ್ಯೇಕ ಗಡಿಯಿರುವುದಿಲ್ಲ ಈ ಪ್ರದೇಶವು ಹಾಡಿಯಾಗಿದ್ದು ಕಲ್ಲು ಬಂಡೆಗಳಿಂದ ಕೂಡಿದ್ದು ಸಾಗುವಳಿ ಮಾಡಿರುವುದಿಲ್ಲ ನಿರ್ದಿಷ್ಟವಾದ ಧರೆ ಕಟ್ಟು ಗಡಿ ಇರುವುದಿಲ್ಲ ಆದ್ದರಿಂದ ಅರ್ಜಿದಾರರುಗಳು ಸ.ನಂ.357/3, 1/1B1 ಗಳನ್ನು ಮೇಲ್ಕಂಡ ಶ್ರೀಮತಿ ಗುಲಾಬಿ ಸೆಡ್ಡಿ, ಸಾಧು ಸೆಡ್ಡಿ, ಪಾರ್ವತಿ ಸೆಡ್ಡಿ, ಲಕ್ಷ್ಮಿ ಸೆಡ್ಡಿ ರವರಿಗೆ ಜಂಟಿ ಖಾತೆಯನ್ನು ಮಾಡಿಸಿ ಕೊಡಬೇಕೆಂದು ಹೇಳಿಕೆ ಕೊಟ್ಟಿದ್ದು ಲಗತ್ತಿಸಿರುತ್ತೆ ಮತ್ತು ಸ.ನಂ. 4/2 0.57 ಬಾಗಾಯ್ತು ನಲ್ಲಿ ಮೇಲ್ಕಂಡ ಅರ್ಜಿದಾರರುಗಳ ಮನೆಯಿದ್ದು ಅರ್ಜಿದಾರರುಗಳು ನಂದು ಮನೆ ವಾಸವಾಗಿರುತ್ತಾರೆ ಸ.ನಂ.4/2ಕ್ಕೆ ಡಿಕ್ಲರೇಷನ್ ಅರ್ಜಿದಾರರುಗಳು ತೋರಿಸಿರುವುಲ್ಲ ಸ.ನಂ. 4/2 0.57ನ್ನು ನಮ್ಮ ಹೆಸರಿನ ಜಂಟಿ ಖಾತೆ (Joining Patte) ವನ್ನು ಮಾಡಿಸಿಕೊಡಬೇಕೆಂದು ಹೇಳಿಕೆ ಕೊಟ್ಟಿರುತ್ತಾರೆ ಮತ್ತು TRI 4187/77.78 ಶ್ರೀ ಶೀನಪ್ಪ ಸೆಟ್ಟಿಯವರು ಸ.ನಂ. 4/1A, 9A, 357/2, 3, 1/1B, ಗಳಿನ ಅರ್ಜಿ ಕೊಟ್ಟಿದ್ದು ಅರ್ಜಿದಾರರ ಊರಿನಲ್ಲಿ ವಾಸಮಾಡಿ (ಅಸ್ಪಡ್ಡಿ) ಗೊತ್ತಿರುವುದಿಲ್ಲ ಎಂದು ತಿಳಿದು ಬಂದಿರುತ್ತೆ ಇದನ್ನು ಲಗತ್ತಿಸಿರುತ್ತೆ."

30) When the lands allotted to the Gulabi Shedthi and other vide TRI No.4137/77-78 ot 4139/77-78 are non-cultivable land, how the family members of Kaveri Shedhti have left 12 feet road

over the said land to ingress and egress of the said land from one portion to another portion. Hence by preponderance of probability one can infer that, the say the Plaintiffs is noting but a imaginary and holds no water.

31) Moreover it is settled principle of law that easement of necessity and prescription are not co-existed with each other. Even the Plaintiffs fails to aver that from what date to what date either the Plaintiffs or their pre-decessor of the Plaintiffs have been enjoyed the right of road which exists on the southern portion of Suit 'B' Schedule Property.

32) Thus, from very pleading of the Plaintiffs, it is very much crystal clear that the Plaintiffs are claiming both easement of necessity and easement of prescription. Now at this stage it is further relevant to refer that what is easement of necessity and easement of prescription, because, in case of easement of necessity the concept is founded on the utility rather than

and equity essential requirement for prescribing the easement of prescriptions or peaceable or open continuous and as of right of enjoyment for the stipulated period in order to mature the user into the legal right. It is therefore, clear that the basis of prescriptive easement is the excess right in accordance with a stipulation in 15 of the Easement Act.

“Whereas, easement of necessity as defined in section 13(a), (c) and (e) of the Act arise on severance of immovable property by a transfer, bequest or partition. Easement of necessity recognized under section 13 of the Act, presumption jointness of the tenements at an anterior point of time and severance of them before enforcement of the claim, right under section 13 of the act arise by operation of law under the situations mentioned therein.”

33) Therefore it is very clear that, the easement of necessity and easement of prescription cannot cooperate together in respect of immovable property. In this case absolutely there is no document to show that existence of 12 to 14 feet road

on the 'B' schedule Property. The pleading and the documents are contrary to each other, Hence the Plaintiffs are not entitled for any relief from the hands of this court.

Hence **POINT NOS. 1 AND 2** answered in the **NEGATIVE** for the Plaintiffs.

34) As stated by the Defendants, if Plaintiffs allowed to use the land of Defendants, the property will loses its nature and yielding capacity. Then the Defendants will be put to more irreparable loss and injury which cannot be compensated in terms of money. Hence **POINT NO.3** answered in favour of Defendants.

POINT NO.4:

35) In view of the above findings, and by considering the facts and circumstances of the case, this Court proceed to pass the following;-

:: O R D E R ::

I.A. No. II, filed Under Order
XXXIX Rule 1 & 2 R/W Sec.151 of
C.P.C. is hereby rejected.

(Dictated to the Stenographer, directly on computer, revised, corrected and
then pronounced by me in the Open Court on this 3rd day of May-2025)

(Manjula B.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.