

KAUP400000072023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL MAGISTRATE  
FIRST CLASS AT BAINDURU.**

**PRESENT**

**Smt. Vidya, A.S. B.A.,LL.B.  
Civil Judge & J.M.F.C.,Bainduru.**

**Dated: This the 18<sup>th</sup> day of July, 2023.**

**Original Suit No.3/23**

<b>Plaintiff:</b>	<b>Sri. Babu</b> , Aged about 42 years, S/o. Chennayya, R/at: Aramanehaklu,Shiroor Village and Post, Bainduru Taluk.
<b>Defendants:</b>	<b>1. Sri. Ravi</b> , Aged about 34 years, S/o. Laxmi, <b>2. Sri. Annappa</b> , Aged about 55 years, D/o. Manjamma, <b>3. Sri. Venkayya</b> , Aged about 49 years, <b>4. Sri. Subbayya</b> , Aged about 43 years, Defendant No.2 to 4 are children of Dara, <b>5. Sri. Macha</b> , Aged about 46 years, S/o. Nagamma, <b>6. Smt. Nagamma</b> , Aged about 65 years, W/o. Narayana Naik, <b>7. Smt. Nandhta</b> , Aged about 39 years, W/o. Vishwanath, Member, Grama Panchayath, Shiroor, <b>8. Sri. Ananda</b> , Aged about 30 years, <b>9. Sri. Bhaskar</b> , Aged about 35 years, Defendant No.8 and 9 are children of

	Nagappa. All are R/at: Aramanehaklu, Shiroor Village and Post, Kundapura Taluk.
	<b><u>Rank of the Parties On I.A.II</u></b>
<b>Applicant/Plaintiff:</b>	Babu
	<b>(Rep.by Sri. N.S.R.B.-Advocate)</b>
<b>Opponents/Defendants:</b>	Ravi and others,
	<b>(Rep.by Sri. M.J.S.-Advocate for defendant No.1, 2, 4 to 6, 8, Sri. L.R.M.-Advocate for defendant No.7 defendant No.3 and 9 are exparte)</b>

### **ORDERS ON I.A. NO.II**

The plaintiff along with suit has filed IA No.II under Order XXXIX Rules 1 and 2 R/w. Sec. 151 of CPC., seeking the relief of temporary injunction in favour of the plaintiff and thereby temporarily restraining the defendants, their people, agents, henchmen and all persons claiming through or under them from forcibly blocking or closing or obstructing the user of the Panchayath road situate to the south of the suit 'A' schedule property running from west to east, by putting up or constructing or laying any obstructions, fencing or wall in between the entrance situate at the eastern portion of the southern side compound wall of the suit 'A' schedule property consisting of Iron gate and thereby from damaging or

destroying the southern side Iron gate and causing obstructions to the entrance from the southern side Panchayath road to enter the suit 'A' schedule property and thereby from committing any nuisance or causing any waste or damage to the suit property by trespassing into it and thereby from interfering with the peaceful user, possession and enjoyment of the suit property by the plaintiff in any manner, till the final disposal of the suit.

**2.** In the accompanying affidavit, applicant has stated that, the threat of the opponents is imminent. They are about to do their intended threatened acts. They are determined to carryout their intended threatened acts are high-handedly, illegally, unauthorizedly and forcibly. The defendants are now collecting men and materials to carryout their threatened acts and thereby to prevent him from enjoying the suit 'A' schedule property peacefully belonging to him, by having the access through the southern side panchayath road to enter the suit 'A' schedule property and to cause loss to him, by blocking the existing road. The defendants have no manner of right of whatsoever to do so and they have no regard for law and order. So, the act of the opponents are all illegal and against law and they are upto do anything. The applicants have a

strong prima-facie case and a fair chance of success in the suit and also the balance of convenience tilts in his favour. If the opponents are not prevented from carrying out the said illegal acts, he shall be put irreparable loss, hardship, injury and inconvenience which cannot be compensated by way of money. With these averments the plaintiff has sought for allowing the application.

3. The defendants have stated that the written statement may be treated as objection to the I.A.No.II.

4. Heard both sides and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

**Point No.1: Whether the applicant has made out prima facie case ?**

**Point No.2: Whether the plaintiff establishes that balance of convenience lies in his favour ?**

**Point No.3: Whether the plaintiff establishes that if temporary injunction is not granted, he will be put to great loss or hardship ?**

**Point No.4: What order?**

6. The findings of this Court on the above said points are as under:

**Point No.1: In the Affirmative,  
Point No.2: In the party Affirmative,  
Point No.3: In the partly Affirmative,  
Point No.4: As per final order  
for the following:**

**REASONS**

7. **Point No.1** This Court has already narrated the facts stated in the affidavit annexed to the application. On perusal of case file, it is seen that the plaintiff has sued the defendants for seeking the relief of permanent injunction.

8. It is the specific case of the plaintiff that, suit 'A' schedule property absolutely belongs to the plaintiff and he has been in actual and lawful possession and enjoyment of the suit 'A' schedule property. at the east-northern most portion of the suit 'A' schedule property, there has been a pathway of a width of about 4 feet, for which the plaintiff has put up an iron gate for the ingress and egress to and from the suit 'A' schedule property to the said pathway, which pathway runs from south to north. The Shirooru Grama panchayath intended to form motorable road at the southern side of the 'A' schedule property and the property of other persons, as the P.D.O. of Shiroor Grama Panchayath requested the plaintiff to give up a small southern most portion of the suit 'A' schedule property for their

intended formation of road in the year 2016-17 out of humanity, the plaintiff has give up the southern most portion of the suit 'A' schedule property for such formation of road. Accordingly, Shiroor Grama Panhayath has got formed a road at the southern side of the suit 'A' schedule property of a width of about 14 feet by putting up interlocks for this road, which road runs from west to east. That by removing the old compound wall and by leaving the southernmost portion of the suit 'A' schedule property for the formation of such road, the plaintiff has constructed a new compound wall at the southern portion of the suit 'A' schedule property by forming an entrance at the eastern most portion of this southern side and has fixed an iron gate to have access to this southern side road from the suit 'A' schedule property. A wide road about 14 feet has been formed at the southern side of the suit 'A' schedule property in the year 2016-17 and this road has been in use by the plaintiff as well as general public of that locality, as it is formed for public use only.

**9.** Further pleaded that, the defendants joined together and have forcibly dumped and stored laterite stones by causing obstruction to the entrance situate at the southern side of the suit schedule property and thereby prevented the plaintiffs people from entering the southern side panchayath road made

up of inter-locks on 25-08-2018 and started threatening the plaintiffs that, he should not use the southern side panchayath road for any purposes. None of the defendants have right to either obstruct or block, muchless to cause disturbance to the entrance from the suit 'A' schedule property to the southern side panchayath road and even this Panchayath road does not belongs to the defendants.

**10.** It is the specific case of the defendants No.1, 2, 4 to 6 and 8 that, in the absolute patta property of the defendant No.6 there exist a private pathway belongs to her and the Shiroor Garam Panchayath got developed the said pathway by putting interlocks. The plaintiff immediately thereafter got put up a gate in between the said pathway and his suit 'A' schedule property without leaving a margin atleast to construct drainage on the side of said pathway cum road as to flow rain water. Hence the concerned Gram Panchayath is now prevented from constructing any drainage on the side of said road/pathway.

**11.** Further contended that, the plaintiff illegally and highhandedly discharging the rain water collected in his property to the above said road cum pathway so as to cause damage to said road with an ulterior motive. Therefore after

receiving the complaints from the general public, the Gram panchayath Shiroor after holding proper enquiry has taken a decision and has directed the general public concerned not use the above said road/pathway to play vehicles until construction of drainage to the said road and this decision was taken by the panchayath to protect the above said pathway cum road. The plaintiff if at all is aggrieved with the said lawful decision taken by the Gram Panchayath, the remedy available to him is to challenge the said order or decision of the Gram Panchayath before the competent authority. The plaintiff instead of exhausting the alternative efficacious remedy available to him got filed the above suit. The plaintiff absolutely has no right to challenge the above said decision taken by the Gram Panchayath before this court and as such the suit is barred under Karnataka Panchayath Raj Act 1993 also. The suit is bad for non joinder of necessary parties and misjoinder also.

**12.** This Court has carefully perused the materials on record in order to ascertain whether the plaintiffs have made out prima facie case for grant of temporary injunction as sought for. The list of documents of the plaintiffs consists of RTC, registered sale deeds, photographs relating to suit property. The list of documents of the defendants consists of true copy of resolution,

copy of petitions, On cursory perusal of sale deed dt:-29-07-2003, it appears that, the suit schedule properties were purchased by the plaintiff. Further, on cursory perusal of RTC in respect of suit schedule property it appears that, suit 'A' schedule property stands in the name of plaintiff.

**13.** Learned Counsel appearing for plaintiff submitted that a wide road about 14 feet has been in use by the plaintiff as well as general public of that locality, it is a public road. Per contra, the defendant has submitted that, in the absolute patta property of the defendant No.6 plaint referred road is exist. The said road is a private pathway. Further submitted that, the gram panchayat has passed resolution in respect of road. If at all plaintiff is aggrieved, the remedy available to him is to challenge decision of the Gram Panchayath before the competent authority.

**14.** It is not in dispute that plaintiff is the absolute owner of the suit 'A' schedule property. It is admitted fact that, there exists a pathway/road and the Shiroor Gram Panchayath got developed the said pathway by putting interlocks. The plaintiff has not challenging the resolution dt:06-06-2018. But, his grievance is defendants are forcibly blocking/obstructing the plaint referred road. Whether said road is private road or public road is triable issue. At this stage, this Court by considering the

materials on record is of the opinion that the plaintiff has made out prima facie case and he is entitled for the equitable relief of temporary injunction. With these observations, this court has answered point No.1 in the Affirmative.

**15. Point No.2 and 3:** On the basis of above discussion the principles of balance of convenience and irreparable loss lies in favour of plaintiff when compared to defendants. If injunction is not granted in favour of the plaintiff, the plaintiff will put great loss and hardship. This court opinion is, if I.A.No.II is party allowed, by restraining the opponents from forcibly blocking or closing or obstructing the user of the Panchayath road situate to the south of the suit 'A' schedule property running from west to east, in any manner till the final disposal of the suit no hardship will be caused to the other side. With these observations, this Court has answer point No.2 and 3 in the partly Affirmative.

**16. Point No.4:** For the aforesaid discussion on point No.1 to 3 this Court proceeds to pass the following:

### **ORDER**

**I.A. No.II filed by the applicant under Order XXXIX Rule 1 and 2 R/w. Section 151 of CPC is hereby partly allowed.**

**The defendants are hereby restrained from forcibly blocking or closing or obstructing the user of the Panchayath road situate to the south of the suit 'A' schedule property running from west to east in any manner till the disposal of the suit by means of this temporary injunction.**

**It is hereby clarified that the order made in IA No.II will not prevent the Shiruru Grama Panchayath from discharging their statutory functions under Karnataka Grama Panchayath Act or any other law for the time being in force.**

**For compliance of Sec. 89 of CPC.**

**Call on: 14-09-2023.**

( Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **18<sup>th</sup>** day of **July 2023**)

**( Smt.Vidya A.S. )  
Civil Judge & J.M.F.C.,Bainduru.**