

KAUP400001172023



**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 14th day of February, 2023.

New Original Suit No.58-23)

Old Original Suit No.540/2022

Plaintiff:	Sri. Govindaraya Prabhu, Aged about 69 years, S/o. Late Vasudeva Prabhu, R/at: Prabhukeri, Kergal Village and Post, Naikanakatte, Byndoor Taluk.
Defendants:	1. Sri. Ganapathi Prabhu, Aged about 80 years, S/o. Late. Ramachandra Prabhu, 2. Sri. Gopala Prabhu, Aged about 61 years, 3. Sri. Ramachandra Prabhu, Aged about 55 years, 4. Sri. Venkatesh Prabhu, Aged about 48 years, Defendant No.2 to 4 are Children of late Devanna Prabhu, All are R/at: Prabhukeri, Kergal Village and Post,

	Naikanakatte, Byndoor Taluk.
	<u>Rank of the Parties On I.A.III</u>
Applicant/Plaintiff:	Govindaraya Prabhu
	(Rep.by Sri. N.S.R.B.-Advocate)
Opponents/Defendants	Ganapathi Prabhu and others,
	(Rep.by Sri. M.P.C.-Advocate)

ORDERS ON I.A. NO.III

The plaintiff along with suit has filed IA No.III 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 blocking, obstructing, diminishing or destroying the suit road of 10 feet width running over and across the suit 'B' schedule property which is mentioned as suit 'ABC' road in the plaint eye sketch or from digging trenches or putting up any other obstructions or constructing compound wall over and across the suit road, which road joins the suit 'A' schedule property and proceeds further and thereby from interfering with the user of the aforementioned suit road by the plaintiff's

family members and others 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 forcibly. They are determined to block, obstruct, diminish, destroy or damage the suit road and thereby to carryout their intended threatened acts as stated in the plaint high handedly, illegally, unauthorizedly and forcibly. The defendants are now collecting men and materials to carryout their threatened acts and thereby to prevent them from using or making use of the suit road peacefully and to cause loss to them. They 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 anything. 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.III.

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 applicants have made out prima facie case?

Point No.2: Where does the balance of convenience lies?

Point No.3: Whether irreparable loss and injury would be caused to the applicant if an order of temporary injunction is not granted?

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 Affirmative;

Point No.3: In the 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 declaration and permanent injunction.

8. The grievance of the plaintiff is that, the suit 'A' schedule property belongs to the plaintiff's branch on absolute mooli right. The plaintiff's branch family members have been and are in actual and lawful joint possession and enjoyment of the suit 'A' schedule property. The 'B' schedule property belongs to the defendants. That except the suit road, the plaintiff's family members and have no other access or road to reach their residential house situate over the suit 'A' schedule property, which road is also being used by the residents of that locality. That at any event the defendants have no right of whatsoever nature to obstruct or diminish or destroy the existing suit road running over the across and through the suit 'B' schedule property.

9. Further pleaded that, the defendants, having joined together, have started constructing a compound wall around the suit 'B' schedule property in the 1st week of November, 2022 and have constructed such compound wall at the other sides by leaving the suit road. After completing such construction at other sides, on 20-11-2022 the defendants started demanding with the plaintiff and other users of that road at that locality that the plaintiff and other users of that

road should join together and pay Rs.5,00,000/- to them in order to retain that road which passes over their suit 'B' schedule property, so as to have a common right over it for their ingress and egress and that they will diminish the width of the said road to 2 feet in case the plaintiff and other users of the road does not pay the aforesaid demanded amount to them within 10 days. For this the plaintiff and others have turned down their request as it is an ancient, mamool road as aforesaid. Enraged at this the defendants made an attempt to block the suit road by digging trenches over the suit road that passes through the suit 'B' schedule property on 22-11-2022 and by getting scent of the same, the plaintiff and other residents of that locality prevented the defendants from constructing such compound wall forcibly by digging trenches across such suit road. In case the defendants put their threats into action, certainly the plaintiff's family members and the surrounding residents would be put irreparable injury, inconvenience and hardship that cannot be compensated in terms of damages.

10. The 2nd defendant filed a written statement and he took a stand that, there is no 10 feet wide road on the

east side of the defendant's property. The said road were never used by the plaintiff and the surrounding residents of that locality. The plaintiff has not used any road as an easementary right over the defendant's property. The defendants were erected a fence around their property. Around 1 year ago, the defendants removed the fence around their property and constructed a red stone compound.

11. This Court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. The list of documents of the plaintiff consists of RTC's, in respect of suit 'A' and 'B' schedule properties, certified copy of Regd.Partition deed dt:17-02-2003, entered into in the family of the plaintiff, photographs relating to disputed road, rough Eye Sketch. The list of documents of the defendant's consists of photographs, CC camera footage, complaint copy, receipt and endorsement issued by the S.H.O. of Bainduru.

12. According to the plaintiff, suit road of the width of 10 feet is situated and runs over and above the suit 'B'

schedule property and also belongs to the defendant. The defendant admitted the existence of the road over the 'B' schedule property. Whether the plaintiff has made out a case of easementary right in respect of the disputed property to reach his property through 'B' schedule property, as alleged by both the parties has to be adjudicated by this court after full-fledged trial between the parties, that too after recording of oral and documentary evidence. Seeking any declaratory or injunctive relief relating to an easementary right shall have plead and prove the nature of easement, manner of acquisition of the easementary right, and the manner of disturbance or obstruction to the easementary right. Whether the applicant has right over the plaint road by easementary right is triable issue. Prima facie to grant an equitable order of temporary injunction, the plaintiff has produced the photographs/documentary evidence to show that there is a road existing in 'B' schedule property and he is using the same. On perusal of plaint and documents produced by the plaintiff prima facie it appears that, the except the suit road, the plaintiff's family members have no other road to reach their residential house situate over the suit 'A' schedule property, which road is also being used by

the residents of that locality. The defendant has not produced the single piece of paper in order to show that the plaintiff's have other road to reach his property. At this stage this Court by considering the materials on record is of the opinion that the plaintiff has made out prima facie case or arguable case. As such, point No.1 is answer in the Affirmative.

13. 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. No inconvenience is cause to the opponent if the injunction is granted, but great inconvenience would be caused to the plaintiff and residents of locality of the suit schedule property. If they are not allow to make use of suit schedule road. If aforesaid road is blocked, even when persons suddenly fall ill they cannot to be rushed to the hospital, thus causing great inconvenience of plaintiff and residents of locality of the suit schedule property. So, prima facie, the blocking of the road would cause irreparable injury to the applicant and not to the opponent. This court has already pointed out the entire allegations made in the

plaint. It is well settled principle that the Court should not hold mini trial at the time of disposing interim application. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. The power to grant a temporary injunction is at the discretion of the court. With these observations, this court has answer point No.2 and 3 in the Affirmative.

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

ORDER

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

The defendants are hereby restrained from blocking, obstructing, diminishing or destroying the suit road of 10 feet width running over and across the suit 'B' schedule property which is mentioned as suit 'ABC' road in the plaint eye sketch or from digging trenches or putting up any other obstructions or constructing

compound wall over and across the suit road, which road joins the suit 'A' schedule property and proceeds further and thereby from interfering with the user of the suit road by the plaintiff's family members and others in any manner till the disposal of the suit by means of this temporary injunction.

For compliance of sec.89 of CPC

Call on: 01-04-2023.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **14th day of February, 2023**)

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