

KABI510031722024



IN THE COURT OF CIVIL JUDGE & JMFC, KUDLIGI
Present: Smt. C.Mahalakshmi., B.A.L., L.L.M.
Civil Judge & JMFC, Kudligi
O. S. No.376/2024
Dated this 22nd day August 2025

Between:

K.Veeranna & others Plaintiffs
VS

M.Marulasiddappa & others ...Defendants

I.A. No.I

K.Shanumukhappa (P-3) ... Applicants/Plaintiffs

(By Sri.J.K.R Adv)

VS

M.Marulasiddappa & others ... Defendants/Opponents.

(By Sri. D.K Adv.)

ORDER ON I.A. NO.I FILED U/O XXXIX
RULE 1 & 2 of CPC

01. The plaintiff no.3 has filed this application under Order XXXIX Rule 1 and 2 R/w Sec.151 of C.P.C. with a prayer to grant interim temporary injunction in favour of the

plaintiffs restraining the defendants from interfering and obstructing the suit 'B' schedule property (way) till disposal of the case.

02. It is averred in the affidavit annexed to the application that their father i.e., Kaptral Basappa S/o Basappa is the absolute owner of the land bearing Sy.no.591/B measuring 0.12 acres which is the A schedule property. Their father has purchased the suit 'A' property from one Channaveerappa S/o Mallal Sidramappa through registered sale deed dated 24.12.1974 for sum of Rs.300/-. From the date of purchase, their father was in peaceful possession and enjoyment of suit 'A' schedule property. After the death of their father, they have succeeded to the suit 'A' schedule property. Originally land bearing Sy.no.591/B, 591/C, Sy.no.591/D belonged to their predecessor-in-title i.e., Channaveerappa's family. That Channaveerappa and their brothers have partitioned Sy.no.591/B, 591/C, Sy.no.591/D and Sy.no.591/B was fallen to the share of Mallal

Channaveerappa. The Sy.no.591/C was fallen to the share of Mallal Basappa (father of defendant no.5 and 6) and Sy.no.591/D was fallen to the share of Mallal Sidramappa and in the above Sy.no.591/B measuring 0.12 cents was purchased by plaintiff's father and Sy.no.591/C was succeeded by defendant no.5 and 6 and Sy.no.591/D was succeeded by legal heirs of deceased Sidramappa i.e., father defendant no.1 to 4 herein. Previously plaintiffs' father used to reach the suit 'A' schedule property through Sy.no.591/D and Sy.no.591/C and considering the same, plaintiffs' father has purchased the suit 'A' schedule property. From the date of purchase, their father has used the said way to reach the 'A' schedule property and the same was continued even to this day.

03. Now Sy.no.591/B was sub-divided as Sy.no.591/B measuring 0.03 cents (in the name of plaintiff no.1), Sy.no.591/4 measuring 0.03 cents (in the name of plaintiff

no.2), plaintiff no.2 has constructed a house in Sy.no.591/4 and residing with his family.

04. That the defendants after obtaining the mutation with respect to their said properties, started to cause obstruction to plaintiffs' easementary right of way by way of necessity to reach the suit 'A' schedule property. The plaintiffs have no alternative way to reach the suit 'A' schedule property. As the defendants are financially strong, the defendants are denying our easementary right of way, as such they are filing the present suit for declaration of their easement of necessity to reach the A schedule property through suit 'B' schedule property. Hence, the application and suit.

05. The defendant no.1 has filed written statement and filed memo to treat the written statement as objection to application and denied all the averments made in the application and contended that the suit 'B' schedule property is ancestral property of defendant no.1 to 4 and after mutation as per bearing M.R.No.H-45/2013 dated 16.07.2014,

defendant no.1 to 4 are in peaceful possession and enjoyment of the same without anybodies obstruction or interference. The original owner of suit 'A' schedule property Channaveerappa had never used way in suit 'B' schedule property to reach his land, there is a separate way i.e., main road to reach Sasalavada from the road, the plaintiffs' father took diversion towards left side there is way to reach suit 'A' schedule property. That way is connecting to the above said Halappa, Mallikarjuna, Kotresha and Sidramesh and plaintiff. The said way has been used from many years and eastern side alternative way is there to reach their lands. That the above said persons have never used the way in suit 'B' schedule property. On 12.12.2023, the defendants have approached Tahasildar, Kudligi to conduct survey and mark boundaries. That on 04.01.2024, the survey authorities have conducted the survey and prepared report on 06.01.2024. That on 20.02.2024, the defendants have given application to Tahasildar, Kudligi stating that some strangers are disturbing

the possession of the defendants. The Tahasildar visited the spot on 15.07.2024 and conducted the inquiry and perused the previous documents i.e., sketch, RORs etc., and the Tahasildar Kudligi had given order on 24.07.2024 and that the land owner of Sy.no.589 has encroached western side of the defendants property and that there is no way to reach the property for the plaintiffs in the property of defendant no.1 to 4.The said K.Halappa S/o Jambanna, K.Mallikarjuna S/o Pampapathi, Kotresh, K.C.Sidramappa are the blood relatives of plaintiff and they have filed an application before Tahasildar, to grant way to reach their properties in defendant no.1's land on 15.02.2024. The Tahasildar and his team has visited the spot and ordered that the defendant's land is patta land and in Gramathana sketch there is no way or cart track or footpath and the Tahasildar gave instructions to the defendants to fence his land and given endorsement to the said persons on 07.08.2024 not to disturb the defendants and vacate the encroached property of the defendants. The plaintiff

has filed unholy suit and application only with an intention to harass the defendants. Therefore, he prayed to reject the application.

06. Heard. Perused the I.A.No.I and the documents produced along with the I.A. No.I.

07. The points that arise for my consideration are as under:

- 1. Whether the plaintiffs prove prima-facie case in their favour?**
- 2. Whether the plaintiffs prove the balance of convenience lies in their favour?**
- 3. Whether the plaintiffs would suffer irreparable loss and injury if the prayer of interim injunction is not granted?**
- 4. What order?**

8. My answers to the above points are as under :-

- Point No.1-3 : In the Negative.**
Point No.4 : As per my final order for the Following:

:: REASONS ::

9. Point No.1:- The present suit is filed by the plaintiffs seeking the relief of declaration of easementary right and permanent injunction against the defendants. The case of the plaintiff is stated above.

10. It is well settled principle of law that for grant of temporary injunction three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss. In **Dalpat Kumar V/s Pralhad Singh reported in AIR 1993 SC 276** the Hon'ble Apex Court explained these factors as follows;

i. There is a serious disputed question to be tried in the Court and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant.

ii. The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at trial and

iii. That the comparative hardship or mischief or inconvenience which is likely

to offer from withholding the injunction will be greater than that would be likely to acted from granting it.

11. On careful scrutiny of the documents placed by the plaintiff at this stage, it appears that the case of the plaintiff is with respect to declaration of easement rights with respect to suit schedule A property. However, it is pertinent to note that the plaintiffs have sought for way to reach their A schedule property through suit B schedule property. However, prima-facie it is pertinent to note that in the plaint A and B schedule property, the plaintiffs have not shown as to which side the way is situated. Moreover, the plaintiffs state that they have been using way through B schedule property to reach their property from the date of purchase of the A schedule property. However, in this regard the sale deed under which the suit A property was purchased does not reflect their case that there was way in B schedule property to reach the A schedule property. The argument of the plaintiffs is that there is mention of way in the partition effected between the defendant

no.1 to 4 and that way leads to their property and they have no other alternative way. However, in this regard it is pertinent to note that the defendant no.1 to 4 have divided their property by way of partition and it shown in the western portion that there is way. However, without full fledged trial, it cannot be held that the said way is the way to reach their property. The defendants have stated that there is alternative way to reach the A schedule property. However, there is no material in this regard. However, the plaintiffs have to prove that there is prima-facie case in their favour entitling them to the temporary relief of injunction. However, the plaintiffs have not produced any material in support of their case. Hence, it is has to be observed that there is no prima-case in their favour. Therefore, it can be held that the plaintiff has not made out prima-facie case. Therefore, point no.1 has to be answered in the **Negative**.

11. Point no.2 and 3:- These points are interconnected, as such they are taken up together for discussion in order to

avoid repetition of facts. However, from the materials provided by the plaintiffs and as discussed above, it is prima-facie appearing that the plaintiffs have not proved prima-facie case. Therefore, the question of balance of convenience and irreparable loss does not arise at all. Hence, the point no.2 and 3 have to be answered in the **Negative**.

12 Point No.4:- In view of reasons and findings given on the aforesaid points, I proceed to pass the following:-

:: O R D E R ::

I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is hereby rejected.

No order as to costs.

(Dictated to the stenographer, directly on the computer, typed by him, corrected by me signed and then pronounced by me in the Open Court on this the **22nd day of August 2025**)

(Smt. C.Mahalakshmi)
Civil Judge and JMFC., Kudligi