

KADG420001092025

**IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.****Present : Shri.Manu Sharma S.P.,**

B.A.LAW.LL.M.

Civil Judge and JMFC, Harapanahalli

Dated this 15th day of July, 2025**OS No.168/2025****PLAINTIFF/s**

1. B.N.Kumara S/o B.Keshyanaik, Aged about 42 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
2. B.Suneel S/o B.Keshyanaik, Aged about 40 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

(By Sri.K.B.R.Adv.,)

-Vs.-

DEFENDANT/s

1. Smt. Kammibai W/o Jaya Naik, Aged about 55 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
2. Shettya Naik S/o Rama Naik, Aged about 50 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
3. Jaya Naik S/o Muni Naik, Aged about 45 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

4. B.Sakra Naik S/o Late Lokya Naik, Aged about 54 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

5. N.Lalya Naik S/o Pakkera Naik, Aged about 64 years, Occ: Retired P.S.I, R/o Kasisanagameshwara Badavane, Harapanahalli town, Vijayanagara District.

6. Gomlibai W/o Nagya Naik, Aged about 56 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

7. Samkibai W/o Late Rama Naik, Aged about 38 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

8. B.Dayananda S/o Late B.Manohar, Aged about 26 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

(D-2, 5 and 7 Party in Person.)

(D-1, 3, 4, 6 and 8 are placed exparte)

PARTIES TO ON IA No.II

PLAINTIFFS/APPLICANT/s

1. B.N.Kumara S/o B.Keshyanaik, Aged about 42 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

2. B.Suneel S/o B.Keshyanaik, Aged about 40 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

-Vs.-

**DEFENDANTS/s/OPPONENT/
s**

1. Smt. Kammibai W/o Jaya Naik, Aged about 55 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
2. Shettya Naik S/o Rama Naik, Aged about 50 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
3. Jaya Naik S/o Muni Naik, Aged about 45 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
4. B.Sakra Naik S/o Late Lokya Naik, Aged about 54 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
5. N.Lalya Naik S/o Pakkera Naik, Aged about 64 years, Occ: Retired P.S.I, R/o Kasisanagameshwara Badavane, Harapanahalli town, Vijayanagara District.
6. Gomlibai W/o Nagya Naik, Aged about 56 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
7. Samkibai W/o Late Rama Naik, Aged about 38 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.
8. B.Dayananda S/o Late B.Manohar, Aged about 26 years, Occ: Agriculture, R/o Shivapura village, Harapanahalli Taluku, Vijayanagara District.

ORDER ON IA NO.II

1] The Plaintiffs have filed application as per I.A.No.II under Order 39 Rule 1 and 2 read with section 151 of CPC for temporary injunction seeking to restrain the defendants from causing obstruction in any manner to the Plaintiffs for the use and enjoyment of 'EFGH' road shown in the sketch filed with the plaint as right of way till disposal of the suit.

2] **That, the application is accompanied by the Affidavit of Plaintiff No.1.**

3] Case of the Plaintiffs is that their grand father had purchased the land bearing survey number 82/D measuring 4 acres 62 cents situated at Shivapur Village of Harapanahalli Taluk under registered sale deed dated 20-07-1927 from Patila Siddalingappa S/o. Vrupakshappa of Alagilavada Village. Father of Plaintiff submitted application in Form No.1 for grant of occupancy rights and land reforms tribunal granted occupancy rights in the name of father of Plaintiffs by issuing Form No.2 on 09-06-1987, and his father had transferred the said land in his name and his name came to be jointly entered in the records of the said property along with the name of his father. Land bearing survey number 82/C belongs to Defendant No.1. Public way running from southern side to northern side is situated at Shivapura Village and Plaintiffs have to reach their land through that public road. Plaintiffs have to pass through land bearing survey number 82/A, B, C, D, E which is marked as EFGH cart road in the plaint sketch map to reach his land. The said cart road was being used by the ancestors of the Plaintiffs, and Defendants or their ancestors had never

raised objection for the use of said cart road by the Plaintiffs or by their ancestors. There is no other alternative road to reach the land of the Plaintiffs. Defendant No.1 to 3 are causing obstruction to the Plaintiffs in using said cart road. Defendant No. 1 to 3 have got nothing to with the EFGH cart road used for reaching the property of the Plaintiffs. Hence, the application.

3. Defendants are placed ex parte and hence there is no contest to the application.

4. The following points that would arise for my consideration are as hereunder;

1. Whether the plaintiffs have made out prima-facie case for granting of temporary injunction order in their favour?
2. Whether there is balance of convenience in favor of plaintiffs?
3. Whether plaintiffs would suffer irreparable loss and hardship if injunction is not granted?
4. What Order?
- 5.** Heard arguments of Plaintiff and perused records.

6. My findings on the above Points are as hereunder:

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

REASONS

7. Point No.1:- The Plaintiffs have filed application seeking temporary injunction to restrain the defendants from causing obstruction in any manner to the Plaintiffs for the use and enjoyment of 'EFGH' road shown in the sketch filed with the plaint. It is his case that he has to reach his land ie survey number 82/D through land survey number 82/A, B, C, E and F. Plaintiffs have asserted that Defendant No.1 to 3 are obstructing the use of said road by the Plaintiffs. Plaintiff has stated that land bearing survey number 82/A belongs to Defendant No.1, but she never appeared before the court. However ROR of said land is standing in the name of Defendant No.4. But Defendant No.4 remained ex parte. Plaintiff has produced ROR of land bearing survey number 82/B standing in the name of Defendant No.5 and 6. Defendant No.5 submitted before the court that he is not interested to contest the suit, and Defendant No.6 remained ex parte. Plaintiff has produced ROR of land bearing survey number 82/C standing in the name of Defendant No.1. But Defendant No.1 has not contested the application. Plaintiff has produced the ROR of land bearing survey number 82/E standing in the name of one Manjula. However said Manjula is not made as party to the suit. It is mentioned in the ROR that said Manjula is wife of one Late.Manohar. Here Defendant No.8 is shown as son of Manohar, but he remained absent and placed ex parte. Plaintiff has also produced the ROR of land bearing survey number 82/3 standing in the name of Defendant No.7 who appeared before the court and submitted that he is not interested to contest the suit. Thus, documents produced by the

Plaintiffs at this stage prima facie indicate that Defendant No.1 and 4 to 8 are the adjacent owners of the property belonging to Plaintiffs.

8. Plaintiffs have produced village map which prima facie discloses that property of the plaintiffs ie land bearing survey number is situated in the middle of land survey number 82/C and 82/E. The said map also prima facie discloses that Plaintiffs have to reach Sy.No.82/D by passing through 82/A, B,C, E and 3. Here Defendant No.2 and 3 have not produced any documents to show their prima facie rights over land bearing survey number 82/D. Further, Defendant No.1 has also not produced any documents prima facie showing existence of other alternative road to reach the property of the Plaintiffs. Therefore it is to be held that Plaintiffs have made out prima facie case for grant of temporary injunction. Hence, I answer Point No.1 in the Affirmative.

9. Point No.2 and 3:- As these two points are interlinked, they are taken up together for common discussion in order to avoid repetition of facts. As already discussed it is clear that plaintiffs have made out prim-facie case for grant of temporary injunction in their favour. Under such circumstances, if Defendant No.1 to 3 continue to obstruct the use of road by the Plaintiffs it defeats valuable rights of the plaintiff and both suit and application would be rendered infructuous which in turn cause high inconvenience to the plaintiffs and also make them to suffer irreparable loss and hardship as plaintiffs will be compelled to face multiplicity of litigation for protection of their valuable rights over the suit properties. Under such circumstances, it is to be held that, balance of convenience in the present case lies in favour of

plaintiffs and plaintiffs have also made out case of loss and hardship. Hence I answer Point No.2 and 3 in affirmative.

10. Point No.4:- For the reasons stated above I am of the opinion that, application filed by Plaintiffs is to be allowed. In the result, following:-

ORDER

IA No. II filed by the plaintiffs U/o 39 rule 1 and 2 R/w Sec. 151 of CPC is hereby allowed.

Defendant No.1 to 3 are hereby restrained from making any kind of obstruction in any manner for the use and enjoyment of right of way in the suit schedule property shown as EFGH in the hand sketch filed along with plaint till disposal of the suit.

(Dictated to the Stenographer transcribed and typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this **15th Day of July 2025.**)

(Manu Sharma S.P)
Civil Judge and JMFC.,
Harapanahalli.

**(Vide separate order)
Order pronounced in the Open Court
vide Dt.15.07.2025.**

: ORDER :

IA No. II filed by the plaintiffs
U/o 39 rule 1 and 2 R/w Sec. 151
of CPC is hereby allowed.

Defendant No.1 to 3 are
hereby restrained from making any
kind of obstruction in any manner
for the use and enjoyment of right
of way in the suit schedule property
shown as EFGH in the hand sketch
filed along with the plaint till
disposal of the suit.

15.07.2025

**Civil Judge and J.M.F.C.,
Harapanahalli**

For Plaintiff evidence.

Call on:

15.07.2025

Civil Judge and J.M.F.C.,

Harapanahalli