

IN THE COURT OF ADDITIONAL CIVIL JUDGE AND JMFC, INDI

DATED THIS THE 25th DAY OF APRIL 2018

PRESENT

Sri S.S.BHARATH M.A., LL.M.,
ADDITIONAL CIVIL JUDGE AND JMFC AT INDI

ORIGINAL SUIT NUMBER-200 OF 2017

Between

1. Dastagir S/o.Husensab Jetagi. **Plaintiff**
(Represented by Sri.S.S.Rabinal, Advocate)

And

1. Sanganabasu S/o.Basappa Bhatagunaki,
and another. **Defendants**
(Defendant no.1 represented by Sri.S.J.Walikar, Advocate)
(Defendant no.2 Represented by Sri.R.S.Metri, Advocate)

I.A.No.I

1. Dastagir S/o.Husensab Jetagi, **Plaintiff**
(Applicant)

And

1. Sanganabasu S/o.Basappa Bhatagunaki,
and another. **Defendants**
(Opponents)

I.A.No.II

1. Sanganabasu S/o.Basappa Bhatagunaki,
Defendant-1
(Applicant)

And

1. Dastagir S/o.Husainsab Jatar. **Plaintiff**
(Opponent)

This suit is filed seeking the reliefs' of declaration and permanent injunction. **I.A No.I** and **II** filed by the respective parties are coming on for orders after arguments, this day, the court made the following.....

Orders on I.A No.I and II

1. The case of the plaintiff is as follows;-

He is the owner in possession of the property in Sy.No.176/1 measuring 04-acres at Masali B.K. village. The defendant No.1 is the owner of the property in Sy.No.174 measuring 12-acres 02-guntas of the same village. The defendant No.2 is the owner of the property in Sy.NO.176/1x measuring 03-acres 09-guntas of the same village. There is a cart way within the properties of the defendants. The same is being used by the plaintiff from last 30 years. It is the only way available for him to reach his property. It is stretched in the manner showed in the plaint hand sketch. He would use the suit way to carry agricultural equipments to his property. The defendants obstructed him while the said way was being used by him though he has perfected his right by way of easement. Despite requests from the plaintiff and despite advises of the elders of the village, the defendants obstructed him.

2. The contentions of the defendant No.1 are as follows;-

There is no cart way within his properties. There is a road famously known as Jod-Sakali road. It is stretched from Salotagi to Sangogi village. In between the said villages, the properties of both the plaintiff and defendants are situated.

From the said Jod Sakali village, the plaintiff is having a nearest way to approach his property. The plaintiff is having another nearest road from Masali village up to the said road, which is stretched up to Sy.No.182 and it enables him to approach the property in Sy.No.183. Therefore, there is a nearest way towards eastern side. The cart way showed in the plaint hand sketch is not at all there in existence. In the place where the road has been showed in the plaint hand sketch, the sugarcane crops are standing.

3. The pleadings of the defendant No.2 are as follows;-

It has been stated in the written statement paragraph No.7 that, this court is having jurisdiction to decide the present case and the proper court fee also has been paid by the plaintiff. The relief sought by the plaintiff may be granted in the interest of justice as there is a cart way, showed in CDE alphabets in the plaint hand sketch.

4. Along with the suit, the plaintiff has filed I.A.No.1 under Order 39 Rules 1 and 2 of CPC seeking to restrain the defendants from obstructing him in using the suit cart way.
5. In the affidavit filed in support of the above application, the plaintiff has reiterated his plaint averments.

6. The learned counsel appearing for the defendant No.1, on behalf of the defendant No.1, has filed another application Under Order 39 Rule 4 of CPC seeking to set aside the ex-parte temporary injunction order granted in favour of the plaintiff, which is being continued till date.
7. Heard the learned counsel Sri.SSR appearing for the plaintiff and also heard the learned counsel Sri.SJW appearing for the defendant No.1. Heard the learned counsel Sri.RSM appearing for the defendant No.2.
8. **The following points arise for consideration in IA No.I filed under Order 39 Rules 1 and 2 of CPC;-**
 1. Whether the plaintiff has made out prima-facie case and balance of conveniences in his favor for granting him injunction?
 2. Whether the plaintiff has made out that withholding of injunction order would put him in trouble?
 3. Whether the defendants have made out that grant of injunction would cause irreparable loss and injury to them?
 4. Whether the plaintiff is entitled for the reliefs sought for?
 5. What order?
9. **My answers to the above points are as under;-**
 - Point No.1:** in the affirmative

Point No.2: in the affirmative

Point No.3: in the negative

Point No.4: in the affirmative

Point No.5: As per final orders.

10. The following points arise for consideration in I.A.No.II filed under Order 39 Rule 4 of CPC;-

1. Whether the defendant No.1 has made out good grounds to vary or to set aside the injunction order granted in favour of plaintiff earlier?
2. What order?

11. My answers to the above points in IA.II are as under;-

Point No.1: In the negative.

Point No.2: As per final orders.

REASONS ON POINTS' NO.1 TO 4 IN I.A.NO.I

- 12. Points no.1 to 4 in I.A.No.I;-** The plaintiff claims the relief of declaration to the effect that, in the properties of the defendants in Sy.No.174 and 176/1x, there is a cart way showed in plaint hand sketch in CDE alphabets. It enables him to reach his property. It is situated in the side of the properties of both the defendants. Despite having no right upon the said cart way, though it is being in use by the plaintiff and the defendants from the last 30 years, recently

the defendants started obstructing him.

- 13.** The defendant No.2, as aforesaid has consented to decree the suit as prayed for. The defendant No.1 contends that no cart way is in existence with in his property. The plaintiff has filed a false hand sketch. The place showed in the hand sketch as a suit way, the sugarcane crops are standing.
- 14.** In support of the suit claim, the plaintiff has furnished the photographs, which would indicate some road and an open space and an area where the sugarcane are standing.
- 15.** In support of the arguments addressed by the learned counsel appearing for the defendant no.1, he has furnished the photo copy of the village map.
- 16.** The present suit being filed only in respect of the right pertaining to the alleged cart way, at this juncture it is inappropriate to express anything on the merits of the case. The suit is in premature stage. To decide whether the alleged cart way is in existence or not, the trial shall be conducted. Without conducting the trial, the above point cannot be decided at all.
- 17.** Therefore, at this juncture, it is proper to confine the discussion only on the points such as; whether the plaintiff has made out triable aspects, prima facie aspects against

the defendants to continue injunction. Further this court has to examine whether the plaintiff is successful in convincing this court to the effect that, balance of conveniences lie in his favour. At the same time, this court is examining as to whether the plaintiff has made out that, if the injunction is denied, he would be put to trouble or not. Further, this court is examining whether the grant of injunction would trouble the defendant No.1 or not.

18. While examining the said aspects, the court opines herein on the basis of the sketch relied upon by the defendant No.1 in support of his arguments on the application on hand and also on the basis of village map and the suit hand sketch produced and relied upon by the plaintiff that, the village map photo copy produced by the defendant No.1 and the suit hand sketch and the village map relied upon by the plaintiff are identical. Wherein, the plaintiff would contend that their properties are somehow adjacent properties and the village map prepared by the concerned authority has not been challenged till day in the manner known to the law. In the village map, the suit cart way has been indicated by the concerned authority with doted lines.

19. The learned counsel appearing for the defendant No.1 also

has admitted the submission of the plaintiff to the effect that, the village map would become final as it has not been challenged by the defendant No.1 till date in the manner known to the law. The map would indicate the suit cart way in dotted lines.

20. Therefore, at this juncture, the plaintiff is successful in making out the prima-facie and triable aspects against the defendants. In view of there being no dispute in respect of the village maps relied upon by both the parties herein and in view of those maps are being identical, at this juncture, this court opines that, the balances of conveniences would lie in favour of the plaintiff.

21. Though the defendant would contend in the written statement that the suit cart way alleged by the plaintiff is not at all there in existence, but, during the course of arguments addressed on the application on hand, the learned counsel appearing for the defendant no.1 as aforesaid has admitted that, in the village map, the suit cart way has been showed in dotted lines to the side of their properties.

22. Further during the arguments, the learned counsel appearing for the defendant No.1 has admitted the

existence of the cart ways within the adjacent properties which have been showed in dotted lines as aforesaid. But, he disputes the existence of the suit cart way only within his properties. Therefore, the above submissions ignite a doubt in the mind of the court. Be that as it may but, at this juncture, this court is convinced to express that, the plaintiff is successful in making out the grounds for grant of injunction.

23. Therefore, at this juncture, in view of the plaintiff being successful in convincing this court as to the existence of the cart way within the properties of both the defendants No.1 and 2 with the help of the maps aforesaid relied upon by both the parties to the suit, certainly, the plaintiff has made out very goods grounds to grant injunction in his favour.

24. Therefore, it is clear that, despite above aspects, if the injunction order is denied, certainly the plaintiff may be put to trouble. At the same time, in view of the cart way having been sought to be in existence to the side of the properties of the defendants No.1 and 2, certainly with the grant of present injunction order, the defendants No.1 and 2 will not be put to trouble. Therefore, for the above reasons

collectively, I answered the **points' no.1, 2 and 4 in the affirmative and the point No.3 in the negative.**

REASONS ON THE POINT NO.1 IN I.A.NO.II

25. Point No.1 in I.A.No.II;- In view of the application No.2

having been filed by the defendant No.1 seeking to set aside the exparte injunction order granted earlier, it is appropriate to dispose of the same with the present orders only as the arguments having been heard on the same.

26. For the reasons assigned while answering the points No.1 to 4 in I.A.I, for the very same reasons, it is the considered opinion of this court that the defendant No.1 neither made out convincing grounds nor made out the aspect that the injunction order would put him into trouble etc. Therefore, the circumstances warrant negative findings in respect of above point No.1. Therefore, I answered **the point no.1 in the negative.**

27. Point no.5 in I.A.no.I and point no.2 in I.A. no.II;- As per final orders.

ORDERS ON I.A.NO.I

I.A No.I filed by the plaintiff under order 39 Rules 1 and 2 of CPC is hereby allowed and the defendants No.1 and 2 or anybody claiming through them shall not obstruct the plaintiff in using the suit cart way showed in CDE

alphabets in the plaint hand sketch till pending disposal of this suit.

ORDERS ON I.A.NO.II

I.A.No.II filed by the defendant No.1 under order 39 Rule 4 of CPC is hereby dismissed. **Call on for enquiry U/Sec.89 of CPC and also U/o 10 of CPC by: 09.07.2018.**

(Dictated to the steno, transcribed by him, corrected by me and then pronounced in open court on this 25th day of April 2018)

**(S.S.BHARATH)
ADDITIONAL CIVIL JUDGE AND JMFC INDI**