

KAVP310022982022



Presented on : 25-03-2022

Registered on : 28-03-2022

Decided on : 04.06.2025

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC, INDI.**

-PRESENT-

SHREE VIKAS DALAWAI.

B.A., LL.B.

Additional Civil Judge & JMFC, Indi.

Dated this the 4th Day of June, 2025

Original Suit No.182/2022

PLAINTIFF/S:

1. **Shri. Layappa S/o. Kareppa Asangi and another.**

-V/s-

DEFENDANT/S:

1. **Shri. Mallappa S/o. Gurappa Ballolli and others.**

I.A.NO.I

Applicant/s/Plaintiff/s:

1. **Shri. Layappa S/o. Kareppa Asangi**
Age: 50 years, Occ: Conductor,
2. **Shri.Yallappa S/o. Kareppa Asangi**
Age: 55 years, Occ: Agril.,

Both R/o.Nimbal K.D, Tq: Indi, Dist: Vijayapur

(By Sri.G.S.J. Adv.,)

-V/s-

Opponents/Defendants :

- 1. Shri. Mallappa S/o. Gurappa Ballolli,**
Age : 75 Yrs., Occ : Agril.,
- 2. Shri. Rajashekhar S/o. Gangappa Medegar,**
Age : 60 Yrs., Occ : Agril.,
- 3. Shri. Anand S/o. Bhimaray Ballolli,**
Age :45 Yrs., Occ : Agril.,
All R/o.Nimbal K.D, Tq: Indi, Dist: Vijayapur

(By Sri. R.S.M. Adv.)

ORDERS ON I.A.NO.I

Present application is filed by the plaintiffs under order 39 Rule 1 & 2 of CPC, for seeking Ad-interim Temporary Injunction order against the defendants restraining them from obstructing 'OP' cart way in the suit property till the disposal of the suit.

2. The Brief facts of the plaintiffs and defendants case are as follows:-

The applicant/plaintiff No.1 has contended that he is the owner and in possession of the suit property bearing Sy.No.174 measuring 05 acres 32 guntas of land, the plaintiff No.2 is the owner of the land bearing Sy.No.174 measuring 04 acres 29 guntas, the defendant No.1 is the owner of land bearing Sy.No.175 measuring 07 acres 06 guntas. The said property was standing in the name of his father deceased Gurappa. The defendant No.2 is the owner of land bearing Sy.No.191/5 measuring 04 acre 02 Guntas, the plaintiff/applicant No.1 further submits that, there is only one cart way to reach government land road which is in the land of defendants which shown as 'OP' Cart-way and further submits that since from 26 years they are using "OP" cart-way, now the defendants are unnecessarily obstructing to use and enjoyment of the 'OP' suit cart-way to reach their land. Plaintiff No.1 further submits that the cart way is absolutely necessary to the agricultural purpose and if the defendants are allowed to

obstruct 'OP' cart-way plaintiffs will be put irreparable loss. On the said material grounds the plaintiff has prayed for allowing the present application.

3. The defendants have filed memo and contended that the contention of the written statement paras may be treated as objections to the present application by denying the grounds of the application.

4. The defendants have contended that hand sketch of plaintiff as shown in the plaint is false and the plaintiffs starts from village Nimbal K.D and passing on the Government road leading from Nimbal to Deginal village, then plaintiffs take turn towards north towards 'X' point then proceeds up to point 'Y' then again take turn towards west up to point 'Z' then again take turn towards north reach point 'O' and enters in their lands and he further submits that this cart way is existing since from time immemorial and having well trodden car tracks and it is used by the all land owners and villages including these plaintiffs and there is no any existing

cart-way to reach plaintiffs' land as shown as 'OP' by the plaintiffs. And further submitted that plaintiffs are having no right title or interest in the land of defendants and there is no way at all as shown by the plaintiffs and the plaintiffs have way to reach their lands by the way shown by the defendants in the hand sketch by letters 'XYZO'. On the said material grounds the defendants have prayed for rejection of the present application.

5. Heard both sides, perused the materials available on record.

6. The following points that arise for consideration of this Court is as under:

- 1. Whether the plaintiff/applicant has made out *prima-facie* case?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**
- 4. What Order?**

7. My answer to the above points are as follows;

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

8. Point No 1 to 3:- These points are taken up together for common discussion to avoid repetition facts and circumstances.

9. It is specific case of the plaintiff No.1 that, he is the owner in possession and enjoyment over the suit land bearing Sy.No.174 measuring 05 acres 32 guntas which is shown in the plaint hand-sketch and the plaintiff No.2 is the owner of land bearing Sy.No.174 measuring 04 acres 29 guntas as shown in the plaint sketch, as 'CDEF'. The defendant No.1 is in the possession of land bearing Sy.No. 175 measuring 07 acres 06 Guntas as shown in the plaint sketch as 'GHIJ'. He further contended that 'OP' is cart-way which reach

to government road from plaintiffs' land and he has contended that there is no any alternative way except this way. The 'OP' cart way is shown in the sale-deed and defendant No.1 has signed on the sale deed as witness. when the father of plaintiff purchased the suit property in the year 1995 and the said cart-way is used by plaintiffs and predecessors in title without any obstructions more than 26 years. Since then they are using and enjoying this cart way now the defendants are obstructed to use the cart- way to the plaintiffs. He further contended that when they are moving through the cart-way along with cart, agricultural equipments the defendants have obstructed to use in the suit way and he further contended that the cart-way is absolutely necessary to transfer the above sugarcane crops to the factory through the above suit 'OP' cart-way. Hence, he prays to pass temporary injunction. In support of this, the plaintiffs have produced sale deed, village map, and three Record of Rights, photo copy, and CD.

10. On the other hand though the defendants have resisted the claim made by the plaintiffs contending that the plaintiffs start from village Nimbal K.D and passing on the government road existing Nimbal to Deginal then plaintiffs take turn towards north towards point 'X' then proceeds up to point 'Y' then again take turn towards north towards point 'X' then proceeds up to point 'Y' then again take turn towards west up to point 'Z' then again take turn towards north reach point 'O' and enters in their lands. He further submits that this cart-way is existing since from time immemorial it is used by villagers and plaintiffs also and then plaintiffs reaching their lands through this way only and he further submits that, as there is no way existing as shown by the plaintiffs by letters 'OP'. Hence, the contention at this stage cannot be believed as true and it takes full-fledged trial. Hence defendants have prayed for Rejection of application.

11. In support of this the defendants have produced two Record of Rights, photo copy, and CD.

12. At this juncture, rely on the decision of the Apex Court in **CIVIL APPEAL No.13001 OF 2024 (@ SPECIAL LEAVE PETITION(CIVIL) No. 252 OF 2023, RAMAKANT AMBALAL CHOKSI APPELLANT VS 8 O.S.No.51/2025 HARISH AMBALAL CHOKSI & OTHERS RESPONDENT(S)** wherein it is held at paragraph No. 33 and 34 as extracted below;

PRINCIPLES GOVERNING GRANT OF TEMPORARY INJUNCTION

“33. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad reported in (2001) 5 SCC 568, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction. 34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adju-

dication at the trial. The existence of the prima-facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima-facie case is not to be confused with prima-facie title which has to be established on evidence at the trial. Only prima-facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits.” 16. Placing reliance on this decision it is imperative to infer that the plaintiff has established a prima-facie case which has to be decided on merits and needs investigation.

13. At this stage, this court would place reliance on the decision of supreme court in ***The Pepsi Cola and The Cola Cola- Gujarat Botting Co. Ltd vs Coca cola co..1985(5) SCC 545.***

“The grant of interim injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court”.

“The decision whether or not to grant an interim injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interim injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved.”

14. I have gone through the above materials available on record. The plaintiff has produced the documents pertaining to suit property. It appears that the cart way is necessary to the agricultural purpose to transfer the agricultural product, but at this stage while considering the order of TI, the court has to look the prima facie documents, which is free from any irregularity. On careful scrutiny of the documents placed by the plaintiff prima-

facie reveals that, he is in possession of the suit property. Contesting the suit by the defendants by way of filing the written statement itself reveals that there is interference and obstruction by the defendants. Hence, the plaintiff is able to prove prima-facie case and balance of convenience is also lies in his favour. If the T.I. is not granted in favour of the plaintiffs restraining the defendants from obstructing of using cart way, definitely he would put to great hardship, which cannot be compensated in terms of money etc. Granting of T.I. is not a conclusive order, the same will be considered at the full-pledged trial. Accordingly, I answer point No.1 to 3 in the **Affirmative.**

15. POINT No.4: That for the above reasons, I proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, Defendants are hereby temporarily restrained from

obstructing the plaintiff's possession and enjoyment of the suit "OP" cart-way as shown in the plaint hand-sketch in land bearing Sy.No.174 and 173 of Nimbal K.D Village, Indi Taluka, Vijayapur District till pending disposal of the present suit.

(Dictated to Stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open Court on this the 4th day of June, 2025)

(Vikas Dalawai)

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