

KAVP510025682021



Presented on : 25-05-2021
Registered on : 26-05-2021
Decided on : --
Duration :

IN THE COURT OF CIVIL JUDGE & JMFC, SINDAGI

**PRESENT: Sri. MAHANTESH G.BHUSAGOL. B.A., (Law) LL.B.,
Civil Judge & J.M.F.C, Sindagi.**

Dated: This the 2nd day of June 2023

O.S.No. 182/2021

Plaintiff

1.Subhas S/o Aminappa Chalawadi
Vs

Defendant

1. Mallappa S/o Shivappa manur

I.A.NO.1

Applicant/Plaintiff

1. Subhas S/o Aminappa Chalawadi

VS

Opponent/Defendant.

1. Mallappa S/o Shivappa manur

ORDERS ON I.A.NO.1

This order arises out of an application under Order XXXIX Rule 1 and 2 of CPC, praying to restrain the defendant by way of temporary injunction against them from obstructing and interfering in any manner to use the way from suit property 'AEFG' as ingress and egress for cultivation of applicant/plaintiff land, which has been shown by letters 'ABCD' in the plaint hand sketch, till disposal of the suit.

2. Brief facts of the accompanying affidavit are as follows:

In the affidavit sworn to by the plaintiff, the defendant is already restrained the plaintiff by using the suit property as shown in the hand sketch of the plaint, to reach his land for cultivation purpose, for which it is causing much economical loss, since from Covid-19 and if the present application is allowed no more harm or loss will cause to the other side. If not allowed it will put to great and irreparable loss in terms of economy. The balance of convenience and prima-facie case lies in favour of plaintiff. Therefore, prays to restrain the defendant from obstructing and interfering in any manner to use the suit way. Hence, the plaintiff constrain to file suit along with I.A No.I.

3. Per contra, the defendants appear before the court after service of summons and filed his written statement and also filed adoption memo by adopting the written statement as objection to I.A No.I. In the written statement the defendant has denied the plaint averments put-forth by the plaintiff in the plaint. Further the defendant contended that Sy No.59/3 measuring 4 Acre

property belongs to defendant and he is the owner and possessor of the said property. The plaintiff is owner and possessor of Sy No.58/2 measuring 1 Acre 2 gunthas. The plaintiff in order to reach his property for egress and ingress never proceeded from the way shown in his hand sketch map by letters 'ABCD'. The plaintiff not using the way to reach his property from the defendant land. The plaintiff having separate way to reach his land. The plaintiff has also filed requisition before the Tahasildar Sindagi and to consider the same and the plaintiff trying to forming the new road on the defendants property. This fact itself it prove that the plaintiff had not been using the said suit way for more than 70-80 years. When the plaintiff having alternative way tor each his property for ingress and egress, then he has no right to claim a right of way by way of necessity. Hence, prays to dismiss the application.

4. Heard both sides. Perused the records.

5. The points that arise for consideration are as under:-

1) Whether the plaintiff proves that the prima-facie case lies in his favour?

2) Whether the plaintiff prove that the balance of convenience lies in his favour?

3) Who will be put to irreparable loss and injustice, if application is rejected?

4) What order?

6. My findings on 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 orders
for the following:-

REASONS

7. Point No.1 :- According to the plaintiff, the plaintiff is the owner of Sy No.58/2 measuring 1 Acre 2 gunthas and the defendant is owner of land bearing Sy No.59/3 measuring 4 Acre. Both the lands are adjacent to each other. The plaintiff property shown in the hand sketch map by letters 'ABCD' and the defendants landed property as shown as by letters 'AEFG'. The plaintiff in order to reach his land used the way shown by letters 'H'G' in the sketch map from Dambal village to entering towards Northern side direction and through the land Sy No.59/1, Sy No.59/2 and then reached the suit property i.e., shown by letters 'AEFG' which is approximately width of 12 to 14 feet mud road. The said road is using by the plaintiff from 70-80 years . Now, the defendant is obstructing and interfering to reach the said suit way to reach his property. The plaintiff in order to substantiate his plaint averments he has produced certified copy of sale deed, RTC, sale deeds and another RTC and also photos and CD.

8. On the other hand, the defendant has not produced any documents before the court, but, argued before the court that the plaintiff having alternative way to reach his property. The plaintiff filed requisition before the Tahasildar to form the new road in the property of the defendant. Therefore, the plaintiff has falsely alleged that he has been using the suit road for more than 70-80 years.

When the plaintiff having alternative way, he is not entitle for easement of necessity.

9. The plaintiff and defendant have admitted that the plaintiff is owner and possessor of bearing Sy No.58/2 and defendant is also owner and possessor of bearing Sy No.59/3 and both the lands are adjacent to each other.

10. The plaintiff has produced the certified copy of sale deed wherein its recitals discloses that on 22-06-2012 plaintiff had purchased the suit schedule property from one Yamanappa S/o Basavantappa Kodekal for a consideration amount of Rs.68,000/- and purchased the property bearing Sy No.58/2 measuring 2 Acre 4 gunthas and out of 14 acre 4 guntha and the boundaries shown as East: Sy No.56, West: Sy No.59 i.e., property of the defendant and North: Sy No.58/1 and South remaining his property.

11. The another sale deed produced by the plaintiff also discloses that he has sold out 1 acre 2 guntha out of 2 acre 4 guntha in Sy No.58/2 in favour of one Teena S/o Prakash Kadechur dtd.03.12.2015. So, on perusal of the sale deeds, wherein it clearly discloses that the plaintiff property and defendant's property are adjacent to each other.

12. Further, the plaintiff has produced the RTC pertaining to Sy No.59/3 standing in the name of defendant wherein Phoot kharab – (A) is shown as 1 guntha out of 4 acre land of defendant. So, one guntha land and remaining 3 acre 39 gunthas lands stands in his name. The plaintiff has also produced properties of his

adjoining owners and also produced RTC pertaining to Sy No.59/3 wherein 20 guntha land acquired by the KBJNL Bangalore and also produced RTC pertaining to 58/1 measuring 2 acre standing in the name of one Shankmukappa Hattaraki.

13. As per the Karnataka Land Revenue Act the properties fallen to the A-Kharab which itself it clear that the property left for public purpose. So, in this case, in the property of defendant shown 1 gunta land as A-phot Kharab. So, this court has to ascertain whether the said kharab left for the alleged road or other purpose and same has to be ascertained after full fledged trial.

14. The plaintiff has also produced some photographs of alleged road wherein it could be seen that the road can be seen on the photos from the main road. Therefore, at this stage, on perusal of some of the photographs, it is seen that in some portion tilled the land and in other portion dig the land. So, this itself it shown the obstruction to use the said road.

15. Though, the defendant has alleged in the written statement that the plaintiff having alternative way to reach his property. But, the defendant neither produced sketch map nor pleaded in the written statement in respect of the alternative way from which side it connected to the plaintiff to reach his property. Moreover, in order to consider the alternative way it needs full fledged trial.

16. Therefore, there is a serious question between both the parties regarding the existence of suit way in the property of

defendant and is there any alternative way to reach the plaintiff's property. Therefore, these questions have to be decided on merits and involve questions on facts as well as questions on law.

17. It is relevant to note that to ascertain, whether the plaintiff has made out prima-facie case or otherwise, **the Hon'ble High Court of Karnataka in its judgment between American Cyanamid Co. V/s Ethicon Ltd. reported in ILR 1976 KAR 426** wherein the Hon'ble Court has observed that

“What is most important is not the probability of the success of the plaintiff, but the existence of serious question to be decided. The Court should guard itself against any mini trial. The court is not justified in entering upon anything reassembling the trial of the action of conflicting affidavits in order to evaluate the benefit of either party's case. Since the middle of 19th century, it is clear that the interim orders are granted only on the plaintiff undertaking to pay damages to the defendants for any loss sustained by reason of the Injunction. If it is to be held at trial, plaintiff is not entitle to so restraining the defendant. Insistence of prima facie case leads to confusion. What is important is that the claim is not frivolous or vexatious and there should be a serious question to be tried. Generally where damages are adequate remedy no Injunction should be allowed, but where the undertaking of the plaintiff would compensate the damages suffer by the defendant, Injunction should not be refused on this ground”.

18. On a plain reading of the above said judgment, it is clear that in order to hold that the plaintiff has made out the prima facie case, the court has to looked into whether any serious question to be

decided by the court ? If the ratio applied to the case on hand, in this case there are serious questions have to be decided by this court as aforesaid in the above paras. Further, the judgment **reported in 1999 (1) Karnataka Law Journal 577 between Smt. Rathnamma Vs. B.A. Srinivasa Gupta and others, wherein the Hon'ble High Court of Karnataka has also opined that where** there is a question of law or fact to be tried in the suit and if there is a serious question to be tried in a suit and that on facts on record, probability of applicant being entitle to relief asked for by him is termed prima-facie. So, the Hon'ble High Court of Karnataka has repeatedly held that if there is a serious question has to be decided by court on facts, then there is a prima-facie case.

19. Therefore, by relying upon these two judgments, it is an undisputed fact that there are disputes between the parties and these questions have to be decided by this court after full fledged trial. Therefore, on perusal of the overall documents and pleadings, of the plaintiff, it discloses he has made out the prima facie case. **Under such circumstances, I answered point No.1 in the Affirmative.**

20. POINT No.2: It is the allegation of the plaintiff that now the defendant restraining and objecting him to use the suit way to reach his property. On the other hand, the defendant has denied the existence of road in his property. Therefore, by denying the plea of the plaintiff itself it causing interference by law.

21. It is well settled law that, very intention of granting temporary injunction is to maintain the state of things as it is. This

well settled legal proposition can be borne out from the ratio laid down by the **Hon'ble High Court of Karnataka reported in 1991 (1) KLJ page 577 (Smt. Rathnamma V/s. B.A.Srinivasa Gupta and others)** wherein it is held that.

“(C) CPC 1908, O.39 R.1-Temporary injunction-Grant of-Primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled- It is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party- Where party seeking temporary injunction has satisfied Court that there is question of law or fact to be tried in suit, that court's interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from withholding injunction will be greater than that which is likely to arise from granting it, party is entitled to relief.”

22. And also **in ILR 2004 Karnataka page 4076 (Fakirasab V/s. Syedusab and others)** wherein it is held that:

“(B) CPC 1908-O-39 R.1 & 2-OBJECT OF –
While considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of

the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that if would be available to the plaintiff if he ultimately succeeds in the suit.”

23. And also in **ILR 2007 Karnataka page 1214 (Smt. T.K.Gowramma V/s. C.K.Raviprasanna)** wherein it is held that.

“CPC, 1908-O.39 R.1 & 2-TEMPORARY INJUNCTION UNDER-GRANT OF-HELD, *The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved-The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.”*

24. On combined reading of these judgments, it is a settled law that the court can prevent the changes the nature of suit schedule property during the pendency of the suit. If the defendant restrained the plaintiff by damaging the alleged suit way it amounts to changing the nature of the suit property. Therefore, the purpose of interlocutory order is to preserve in status-quo the rights of the parties.

25. It is pertinent to note that the balance of convenience lies in favour who suffers more irreparable loss and caused more damage and also hardship than the other party. If the defendant obstructed the plaintiff to reach his property on the way of suit way situated at his land it will cause more hardship to the plaintiff than the defendant. If the plaintiff restrained for his egress and ingress to reach his property, then his property will be blocked and unable to transport his agricultural produce to his land, which will cause more hardship than the defendant. Under such circumstances, the balance of convenience tilts in favour of plaintiff. Hence, **point No.2 is answered in the Affirmative.**

26. Point No. 3: It is the apprehension to the plaintiffs that the defendant objecting and interfering to use the suit way to reach his property. The plaintiff has produced photos, wherein some of the photos are clearly seen that the defendant by tilling the land and digging the land objecting the plaintiff to use the suit way. Therefore, at this stage, the plaintiff has shown the obstruction made by the defendant.

27. As discussed supra, if this court not prevented the defendant, then the nature of the property will be changed and the right of the plaintiff in respect of easement of necessity of way over the defendant's property has to be determined by this court. Therefore, looking into the background of the application and obstruction of the suit way by the defendant and the prima facie and balance of convenience lies as stated supra in favour of the plaintiff. Under such circumstances, if the relief sought by the plaintiff is rejected, then admittedly the plaintiff will suffer more hardship than

the defendant. **Accordingly this court holds that the irreparable loss and injury will cause to the plaintiff than the defendant.**

28. Point No.4:- In view of my findings to points No.1 to 3 and discussion as stated above, I proceed to pass the following:-

ORDER

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

The defendant and his men, workers, servants, agents and all those persons claiming through or under them are hereby restrained from obstructing and interfering in any manner to use the way from suit property 'AEFG' as ingress and egress for cultivation of applicant/plaintiff land, which has been shown by letters 'ABCD' in the plaint hand sketch, by way of temporary injunction, till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court, this the **2nd day of June 2023**)

(Mahantesh G.Bhusagol),
Civil Judge & JMFC, Sindagi.

