



**IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC., AT
YADGIRI**

PRESENT

**Sri. Arun Chougule,
B.A.LL.B.[Hons.]**

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

Dated this the 02nd day of June-2026

ORIGINAL SUIT NO.55/2021

PLAINTIFF/S:-	1. Md Zahidd Hussain S/o Abdul Hassan Badal, Age: 41 years, Occ: Agriculture & Business, R/o: Mailapur Base Yadgiri, Tq: & Dist: Yadgiri. 2. Md Fahed Hussain S/o Abdul Hassan Badal, Age: 39 years, Occ: Agriculture & Business, R/o: Mailapur Base Yadgiri, Tq: & Dist: Yadgiri.
	(By Sri.R.S.P Advocate)
-V/S-	
<u>DEFENDANT/S:-</u>	1. The State of Karnataka through Deputy Commissioner, Yadgiri, Tq: & Dist: Yadgiri. 2. The Director Town and Country Planning, Ground Floor, Phase-4, M.S.Building,

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	Dr.B.R.Ambedkar Veedhi, Bangalore. 3. The Additional Director, Department of Town and Country Planning Regional Office Mini Vidhana Soudha, Dharwad-580001. 4. The Commissioner, Yadgiri Development Authority, Yadgiri. 5. Kanyakumari W/o Mallikarjun Chintanalli, Age: 49 years, Occ: Household, R/o Koliwada Yadgiri, Tq: & Dist: Yadgiri.
	(D-1 absent) (D-2 by Learned.D.G.P) (D-3 placed ex parte) (D-4 by Sri.M.A.A Advocate) (D-5 by Sri.N.R.K Advocate)

IN I.A.No.6

<u>Applicants/</u> <u>Defendant No.5 :</u>	Kanyakumari W/o Mallikarjun Chintanalli,
	-V/S-
<u>Opponents/</u> <u>plaintiffs :</u>	Md Zahidd Hussain S/o Abdul Hassan Badal and another.

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i.	<i>Provision under which the application is filed</i>	Order 7 Rule 11(C) Of CPC R/w Sec.76 of Town & Country Planning Act.
ii.	<i>Relief sought for</i>	<i>Rejection of Complaint</i>
iii.	<i>The date on which the application is filed</i>	07.02.2025
iv.	<i>Number of the application</i>	IA No.6
v.	<i>The date on which the objections are filed by different opponents</i>	16.04.2025
vi.	<i>The date on which the orders were passed on the said application.</i>	02-06-2026

**ORDER ON I.A.NO.6 FILED BY THE DEFENDANT NO.5
UNDER ORDER 7 RULE 11(C) OF CPC OF CPC R/W SEC.76
OF TOWN & COUNTRY PLANNING ACT.**

Defendant No.5 has filed the present application under Order VII Rule 11(C) of the Code of Civil Procedure, 1908 (CPC) read with Section 76 of the Karnataka Town and Country Planning Act, 1961 (KTCP Act), seeking the rejection of the plaint on the ground that the suit is barred by law and is, therefore, not maintainable.

2. Defendant No. 5 has sworn to an affidavit stating that the plaintiffs have filed the suit for declaration, permanent

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injunction, mandatory injunction, and easementary rights against the State and the Director of the Town and Country Planning Authority in respect of the suit schedule property. It is contended that Section 76 of the KTCP Act imposes an express statutory bar against instituting civil suits against the Planning Authority or its officers for actions taken in good faith. Consequently, Defendant No. 5 submits that the suit is barred by law, is wholly unmaintainable, and is liable to be rejected at the threshold. Hence, Defendant No. 5 prays that the application be allowed.

3. The plaintiffs have filed objections contending that the application and affidavit filed by Defendant No. 5 are false, frivolous, vexatious, and motivated by a *mala fide* intention to protract the litigation, making the application liable for dismissal *in limine*. They argue that Defendant No. 5 lacks the *locus standi* to seek such relief. On merits, the plaintiffs submit that they were compelled to file the suit for declaration, permanent injunction, mandatory injunction, and easementary rights because Defendants No. 2 to 4 failed to provide the mandatory minimum road width of 9 meters in front of the suit

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plots. This minimum layout specification is required under town and country planning norms and zoning regulations but was ignored when Defendants No. 2 to 4 approved the adjacent layout in Sy. No. 648/1 and 648/7, measuring 3 acres 21 guntas, situated at Yadgiri (B) Village, Yadgiri Taluk & District.

3.1 The plaintiffs state that they submitted multiple representations to the authorities to modify the adjacent layout and rectify the error committed by Defendant No. 3, but their grievances were completely disregarded. Before approaching this Court, the plaintiffs exhausted their administrative remedies by addressing separate representations to Defendants No. 2 to 4. Although the Commissioner of the Yadgiri Development Authority (YDA) and the Additional Director of Town and Country Planning, Dharwad, formally reported to the Director of Town and Country Planning, Bengaluru, that "no access road is available to Plot Nos. 4 and 5," the Director failed to order a modification. Instead, the Director issued an endorsement dated 29.10.2018, stalling further action by stating that a separate suit, O.S. No. 279/2015, was pending before the Civil Judge & JMFC, Yadgiri. The plaintiffs clarify

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that O.S. No. 279/2015 was a simple injunction suit filed against Defendant No. 5 alone and did not involve Defendants No. 2 to 4. Since the statutory authorities failed to exercise their lawful powers to modify the adjacent layout and provide the necessary access road, the plaintiffs argue they were left with no alternative remedy but to approach this Court. They maintain that there is no statutory bar under Section 76 of the KTCP Act preventing this Court from addressing the statutory inaction of Defendants No. 2 to 4. Therefore, they pray for the dismissal of the application with exemplary costs.

4. Thereafter, I heard the arguments advanced by the learned counsel for the plaintiffs and the learned counsel for Defendant No. 5, and carefully perused the entire material on record.

5. After hearing both sides and analyzing the pleadings, application, objections, and documents, the following point arises for my consideration and determination:

1. Whether the plaint is liable to be rejected ?

2. What order?

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6. My findings on the above points are as under;

Point No.1 : In the Affirmative.

**Point No.2 : As per final order,
for the following:**

REASONS

7. **POINT NO.1:** The plaintiffs have filed the present suit seeking the following reliefs:

1. It be declared that, the layout formed in land bearing Sy. No. 648/1 & 648/7 measuring 03 acres 21 guntas of Yadgiri (B), Tq & Dist: Yadgiri as null and void.

2. It be declared that the plaintiffs got Easementary rights of necessity for minimum access road measuring 9 mtr width to enter upon each plot separately as per law.

3. A decree for Mandatory Injunction directing the defendant's No. 2 to 4 authorities to modify the layout formed in land bearing Sy. No. 648/1 & 648/7 measuring 03 acres 21 guntas of Yadgiri (B), Tq & Dist: Yadgiri, by providing minimum 9 mtr width access road to enter upon plaintiffs plots bearing No. 4 & 5 formed in land bearing Sy. No. 643/5 of Yadgiri (B), Tq & Dist: Yadgiri.

4. An order imposing penalties on defendants No. 2 to 4 authorities for not exercising their powers as per law.

5. The costs of the suit be awarded.

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6. Any other reliefs for which the plaintiffs are found entitled in law may also be granted, in the interest of justice.

8. The plaintiffs claim ownership of Plot Nos. 4 and 5, carved out of non-agricultural (NA) land in Sy. No. 643/5 of Yadgiri 'B' village. The original owner of the land, Prakash Rao Morade, obtained a conversion order from the Deputy Commissioner, Gulbarga (No. ಕಂ/ಭೂ/ಕ್ರಯೇ/14:2006-07 dated 01.04.2009) and subsequently secured residential layout approval from the Town Planning Authority, Yadgiri (No. ನಯೋಪಾಯಾ/ಅಂತಿಮ ವಸತಿ ವಿನ್ಯಾಸ: ಕಸಂ-01:2009-10/33-34 dated 20.06.2009). While sanctioning this layout, the authority mandated a 9-meter service road parallel to the Highway, a 3-meter buffer zone, and an additional 7.5 meters for future widening of the existing 30-meter highway. Accordingly, these spaces were left vacant, and Plot Nos. 4 and 5 were configured as abutting this service road, which serves as their sole means of ingress and egress. Relying on this access, the plaintiffs purchased the plots for valuable consideration.

8.1 Subsequently, the adjacent landowner, Smt. Kanyakumari (Defendant No. 5), owner of land in Sy. Nos.

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648/1 and 648/7 measuring 3 acres 21 guntas, obtained a conversion order and layout approval (No. ನಯೋಪಾಯಾ/ಅಂತಿಮ ವಸತಿ ವಿನ್ಯಾಸ: ಕಸಂ.15:2009-10/64-65 dated 26.10.2009). The plaintiffs allege that despite Defendant No. 5's layout being approved later, the Town Planning Authority (Defendant No. 4) committed gross discrimination by failing to mandate a corresponding service road or highway widening zone through Defendant No. 5's land. This came to light when Defendant No. 5 began excavation and construction directly in front of the plaintiffs' plots without leaving any space for the service road, effectively blocking the plaintiffs' access and encroaching upon parts of the road network designated in the plaintiffs' earlier layout.

8.2. The plaintiffs previously filed an injunction suit (O.S. No. 279/2015) against Defendant No. 5, which was later withdrawn with liberty to file a fresh suit owing to the subsequent inaction of statutory authorities. Despite multiple administrative representations and official spot-inspection reports by the Commissioner of the Yadgiri Development Authority (YDA) and the Additional Director of Town & Country Planning, Dharwad—both explicitly confirming that "complete

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access road is not available to Plot Nos. 4 and 5"—the Director of Town & Country Planning, Bengaluru, issued a stalling endorsement dated 29.10.2018. The endorsement deferred statutory action pending the disposal of the already-withdrawn O.S. No. 279/2015. Left with no alternative administrative remedy against this statutory inaction, and asserting their easementary rights of necessity to a 9-meter wide access road under zoning regulations, the plaintiffs filed the present suit seeking to declare Defendant No. 5's layout null and void, and demanding a mandatory direction to Defendants No. 2 to 4 to modify the layout plan.

9. Upon the receipt of summons, Defendant No. 5 appeared through her learned counsel and filed her written statement. She admitted that the plaintiffs are the owners of Plot Nos. 4 and 5 carved out of Sy. No. 643/5, and further admitted that she is the owner of the adjacent land in Sy. Nos. 648/1 and 648/7, measuring 3 acres 21 guntas, situated at Yadgiri 'B' village. She stated that a small portion of her land abuts Plot No. 5 of the plaintiffs. Defendant No. 5 further admitted that she obtained a non-agricultural conversion order

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for her land on 31.12.2002 and that her layout plan was approved by the Planning Authority on 26.10.2009. She also conceded that her layout was formally formatted subsequent to the formation of the layout belonging to the plaintiffs' vendor.

9.1 However, Defendant No. 5 specifically denied the assertion that the planning authorities failed to provide a service road while approving the layout for Sy. Nos. 648/1 and 648/7. She contended that a 9-meter wide road access is fully available to the plots of the plaintiffs. She further contended that the plaintiffs are seeking relief regarding a non-existing subject matter, rendering them ineligible for the reliefs sought in the plaint. Defendant No. 5 also asserted that this Court lacks the jurisdiction to grant the reliefs prayed for, arguing that the Town and Country Planning Authority is the appropriate statutory forum. Finally, she maintained that the plaintiffs have filed a suit for declaration without being in physical possession of the subject matter, and therefore, the suit is wholly unmaintainable and liable to be dismissed.

10. When the matter was posted for the framing of issues, Defendant No. 5 moved the present application seeking the

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rejection of the plaint, on the ground that the suit is barred under Section 76 of the Town and Country Planning Act.

11. A perusal of the pleadings reveals that Plaintiff No. 1 is the owner of Plot No. 4 and Plaintiff No. 2 is the owner of Plot No. 5, both situated in Sy. No. 643/5. Defendant No. 5 is the owner of 3 acres 21 guntas of land in Sy. Nos. 648/1 and 648/7. The vendor of the plaintiffs had obtained a non-agricultural conversion order for Sy. No. 643/5 in the year 2009, and the residential layout was approved by the Town Planning Authority on 20.06.2009. Similarly, Defendant No. 5 secured a non-agricultural conversion order for her land in the year 2002, and her layout map was approved by the Town Planning Authority, Yadgiri, on 26.10.2009.

12. The plaintiffs contend that the Town Planning Authority explicitly mandated their vendor to leave a 7.5-meter wide strip for the widening of the highway on the northern side, a 3-meter wide buffer area, and a 9-meter wide strip for a service road. However, they allege that no such corresponding obligations were imposed upon Defendant No. 5 to leave space

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for a service road or highway widening in her layout. Consequently, the plaintiffs assert that the competent authority practiced gross discrimination while approving the layout maps for the two adjacent parcels of land of the defendant No.5 bearing Sy.No.648/1 and 648/7.

13. The plaintiffs have instituted the present suit against the State of Karnataka, represented by the Deputy Commissioner, Yadgiri (Defendant No. 1), the Director of Town and Country Planning, Bengaluru (Defendant No. 2), the Additional Director of Town and Country Planning, Dharwad (Defendant No. 3), the Commissioner of the Yadgiri Development Authority (Defendant No. 4), and the owner of the adjoining land (Defendant No. 5)

14. The present suit is filed seeking:

- 1. A declaration that the layout approved by the Yadgiri Development Authority in favour of Defendant No. 5 is null and void;**
- 2. A declaration that the plaintiffs possess an easementary right over the alleged service road; and**

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3. A mandatory injunction directing the statutory defendants to modify the approved layout plan to provide an 8-meter wide service road.

15. The plaint averments clearly disclose that the alleged 8-meter wide road is currently not in existence. The primary grievance of the plaintiffs is that while approving the layout map, the competent planning authority failed to provide for such a service road. The principal question that arises for determination is whether the plaint discloses a valid cause of action cognizable by a civil court.

16. A careful, bare reading of the plaint reveals that the plaintiffs are essentially challenging the validity of a statutory layout approval granted by a competent planning authority, and are seeking a mandatory direction to alter and modify that sanctioned layout. The inherent jurisdiction of a civil court is confined to the adjudication of private civil rights. This Court cannot assume the administrative role of a Town Planning Authority to redesign, modify, or alter an approved layout plan by creating new public or service roads that do not form part of the officially sanctioned plan. The remedy against an allegedly

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illegal or discriminatory approval granted by a statutory authority lies before the appropriate appellate or revisionary forum prescribed under the relevant special enactment, and not by way of a comprehensive civil suit.

17. Furthermore, the plaintiffs have sought a declaration of an easementary right. However, the plaint itself proceeds on the explicit basis that the road over which this easementary right is claimed does not physically exist. Law is well-settled that an easement is a right or privilege attached to land, which is exercised over an existing servient heritage. A plaint cannot seek the declaration of an easementary right over a non-existing piece of infrastructure. What is sought by the plaintiffs is not the protection of a vested, existing easementary right, but rather the physical creation of a new road and a consequential recognition of a right therein.

18. Therefore, even if all the averments made in the plaint are accepted as true and correct, no enforceable civil right is shown to exist in favour of the plaintiffs. The plaint completely fails to disclose a clear, justiciable cause of action entitling the plaintiffs to the reliefs claimed. Accordingly, this Court is of the

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opinion that the plaint is liable to be rejected under **Order VII Rule 11(a) of the Code of Civil Procedure, 1908**, as it does not disclose a cause of action.

19. Further, Defendant No. 5 contends that the suit is barred by Section 76 of the Karnataka Town and Country Planning Act, 1961. The said provision, being relevant, is extracted below:

"76. Protection of action taken in good faith.— *No suit, prosecution or other legal proceeding shall lie against the Planning Authority or any Joint Director, Director or any officer of the Planning Authority or Government in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder."*

20. As per the clear mandate of the above provision, a civil suit against the State Government, the Planning Authority, or its officers in respect of any action taken under the provisions of this Act is not maintainable. Admittedly, the acts of the planning authorities in approving the residential layouts of the plaintiffs' vendor and Defendant No. 5 were carried out in their official capacity and in the performance of their statutory

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functions. As such, the present suit, which directly challenges the validity of the said statutory approvals and actions of the planning authorities, is barred under Section 76 of the Act. Hence, Point No. 1 is answered in the **affirmative**.

21. **POINT NO.2:** In view of the above discussion, the following;

ORDER

IA.No.6 filed by the defendant No.5 under Order 7 Rule 11(a) and (d) of CPC R/w Sec.76 of the Karnataka Town and Country Planning Act is hereby allowed and the plaint is hereby rejected for want of cause of action and as being barred by Sec.76 of the Karnataka Town and Country Planning Act, 1961.

No order as to costs.

(Dictated to the stenographer, transcribed by him, transcript corrected by me and then pronounced on this the **02nd day of June, 2026.**)

(ARUN CHOUGULE)
PRL.CIVIL JUDGE & JMFC,
YADGIRI.