

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE::
ANANTHAPURAMU**

PRESENT: G.Srinivas

Principal District Judge, Ananthapuramu

Wednesday, the 19th day of June, 2024

APPEAL SUIT No.49/2020

BETWEEN:

- 1.Krishna Murthy S/o Late Ramaiah, aged 60 years
- 2.K.Chalapathi Naidu S/o K. Krishna Murthy, (died)
- 3.K.Upendra Naidu S/o K. Krishna Murthy, aged 28 years
- 4.K.Narayanamma W/o Late Ramaiah, (died)
- 5.P.Lingaiah S/o Narayanappa, aged 60 years
- 6.M.Naidu S/o Lachaiah, aged 50 years
Nos.1 to 6 are Hindus, cultivation, R/o Nadimipalli Village,
Narpala Mandal, Anantapuramu District.
- 7.Sujatha D/o Late Chalapathi Naidu, aged 38 years
- 8.Kumari Pandu D/o Late Chalapathi Naidu, aged 18 years,
Nos.1 to 8 are R/o Nadimipalli Village, Narpala mandal,
Anantapuramu District.
(Nos.7 & 8 are added as legal representatives of 2nd appellant/D2
as per the IA.No.739 of 2018, dt.07.06.2018)
9. Rajamma W/o P. Chinna Kullayappa, D/o Late K.Narayanamma.
(No.9 is added as legal representative of deceased
4th appellant/D4, as per the IA.No.482/2018, dt.07.06.2018)

.... Appellants/Defendants.

AND

- 1.Pathipati Aswarthamaiah S/o Madanna, aged 62 years
- 2.Pathipati Mangamma W/o Late Narayana Swamy
Both are Hindus, Agriculturists, Nadimipalli Village,
Narpala Mandal, Anantapuramu District. Respondents/Plaintiffs

On appeal against the decree and judgment of the I Additional Junior Civil Judge, Ananthapuramu passed in O.S.No.494/2011, dated 10.03.2020 made between:

1.Pathipati Aswarthamaiah S/o Madanna, aged 62 years

2.Pathipati Mangamma W/o Late Narayana Swamy

Both are Hindus, Agriculturists, Nadimipalli Village,
Narpala Mandal, Anantapuramu District.

.... Plaintiffs.

And

1.Krishna Murthy S/o Late Ramaiah, aged 60 years

2.K.Chalapathi Naidu S/o K. Krishna Murthy, (died)

3.K.Upendra Naidu S/o K. Krishna Murthy, aged 28 years

4.K.Narayanamma W/o Late Ramaiah, (died)

5.P.Lingaiah S/o Narayanappa, aged 60 years

6.M.Naidu S/o Lachaiah, aged 50 years

Nos.1 to 6 are Hindus, cultivation, R/o Nadimipalli Village,
Narpala Mandal, Anantapuramu District.

7.Sujatha D/o Late Chalapathi Naidu, aged 38 years

8.Kumari Pandu D/o Late Chalapathi Naidu, aged 18 years,

Nos.1 to 8 are R/o Nadimipalli Village, Narpala mandal,
Anantapuramu District.

(Nos.7 & 8 are added as legal representatives of 2nd appellant/D2
as per the IA.No.739 of 2018, dt.07.06.2018)

9. Rajamma W/o P. Chinna Kullayappa, D/o Late K.Narayanamma.

.... Defendants.

This appeal suit coming on 08.05.2024 for final hearing before me in the presence of Sri B.Viswanath, Advocate for the Appellants and of Sri K.L.N.Prasad, Advocate for respondents 1 & 2 and on hearing both sides and upon perusing the material on record, this Court delivered the following:-

J U D G M E N T

1. This appeal suit is filed by the unsuccessful defendants against the judgment and decree, dated 10.03.2020 made in O.S.No.494/2011 on the file of the learned I Additional Junior Civil Judge, Ananthapuramu.

2. This Court of First Appellate is the last Court of fact finding. Hence, it is necessary to refer to the pleadings of both the parties.

3. The averments in the plaint, in brief, are as follows:-

The suit schedule property is the ABCD marked Rastha of the plaint plan abutting to the land in Sy.No.529-3 and vanka of Gugudu Village. The first plaintiff is the brother-in-law (husband's brother) of the second plaintiff. One Madenna S/o late P. Aswarthamaiah had three sons i.e., first plaintiff, Late Narayana Swamy and Venkata Naidu. The said P.Aswarthamaiah purchased the land to an extent of Ac.1.00 cents in Sy.No.529-3 of Gugudu Village with specific boundaries from Kesanapalli Venkatappa S/o Chinna Venkataramaiah of Gugudu Village for a valuable consideration. The said Madenna and another also purchased land in an extent of Ac.2.78 cents with specific boundaries in Sy.No.529-2 under registered sale deed, dt.09.03.1964. After the demise of the said Madenna, his $\frac{1}{2}$ share in land in Sy.No.529-2 of Gugudu Village devolved upon the plaintiffs and P.Venkata Naidu. In the subsequent family oral partition, the said property devolved upon the first plaintiff. P.Venkata Naidu got land in Sy.No.529-1 under the said partition. As

the suit is related to the Rastha abutting to the land in Sy.No.529-2 and 529-3, P.Venkata Naidu is not added as a party to the suit.

As per the recitals of the registered sale deed, dt.09.03.1964, the eastern boundary is Rastha leading to Tadipatri Village, which is shown as Rastha from Yellutla to Chillavaripalli. It is a plan marked Rastha of the Village plan of Gugudu Village. One Pathipati Chinna Madannagari Narayanappa, Pathipati Subba Naidu and Pathipati Vijay Kumar, who are friends of the defendants herein tried to dispute the usage of Rastha by the plaintiffs to reach to their lands through plan marked Rastha, which is abutting to Sy.No.529 on its eastern side. So, the plaintiffs filed the suit for declaration and consequential permanent injunction on the file of learned Principal Junior Civil Judge, Anantapuramu in OS.No.305/2011 and also filed IA.No.631/2011 for interim injunction orders, which is allowed by the Court on merits. The plan attached to the decree in the said interlocutory application, clearly shows the existence of Rastha through Sy.No.528 and 527. The copy of the Village plan which is marked as Ex.B1 in the said proceedings also shows the existence of plan marked Rastha from Yellutla to Chillavaripalli, passing through the lands in Sy.No.528, 527 and 539. Though, the Village plan discloses that the said Rastha passes in the middle of those lands, the said Rastha has been shifted towards western side of the land abutting to the lands in Sy.No.529 and 539, adjoining vanka canal for the past 40 years. The learned Advocate Commissioner report also shows the same.

The first defendant is the father of the defendants No.2 and 3. They have got land in Sy.No.527 abutting to the said Rastha (ABCD) of the plaint plan on the eastern side and they are raising Banana plantations. The defendants Nos.4 to 6 owned the land in Sy.Nos.527, 528 and 539 respectively, as shown in the plaint plan. The Court granted interim

injunction orders, pending disposal of the suit in IA.No.631/2011 in OS.No.305/2011 in respect of the usage of Rastha at points ABCD, as referred in the plan to reach to their lands in Sy.No.529-2 and 529-3 through the suit Rastha. There is Thar road running in the Sy.No.539 of Gugudu Village. There is deviation of Rastha from Thar road, which passes through the lands in Sy.No.539, 527 and 528 to reach to the lands of the plaintiffs, as depicted in the photograph taken on 22.10.2011. By colluding with the defendants in OS.No.305/2011, the defendants No.1 to 6 are trying to put thorny tree cuttings in the Rastha with a malafide intention to prevent the plaintiffs from making usage of ABCD Rastha without any manner of right and title to do so. The plaintiffs have no other alternative to reach their lands except, the suit Rastha. The defendants are powerful persons in the Village. When the plaintiffs requested the defendants not to obstruct their usage of Rastha, the defendants stated that they are not parties to the suit in OS.No.305/2011 and tried to prevent the plaintiffs from using the ABCD Rastha to reach to their lands in Sy.No.529-2 and 529-3. The defendants also constructed a stone wall abutting Rastha on its eastern side to safeguard their Banana garden in Sy.No.528 and 529. The defendants have no absolute right with regard to the suit schedule rastha, which is plan marked Rastha. About three days prior to the suit, the defendants with the help of roudy elements, tried to obstruct the plaintiffs. But, the plaintiffs averted the same with great risk. Hence, the plaintiffs filed the suit against the defendants No.1 to 6 for declaration of their right to make usage of ABCD Rastha and consequential permanent injunction restraining the defendants from obstructing them to reach to their lands in Sy.No.529-2 and 529-3.

During pendency of the suit, the second defendant died on 28.09.2016, leaving behind defendants Nos.7 and 8 as legal heirs to him and to his estate. Since, the defendant No.8, is minor daughter, the

defendant No.7 being mother of defendant No.8 is representing her as natural guardian. So, as per the orders in IA.No.29/2018. dt.06.02.2018, defendants Nos.7 and 8 are added as legal heirs to the second defendant. Subsequently, as defendant No.4 died, his legal heir i.e., defendant No.9 is added as per the orders in IA.No.482/2018, dt.07.06.2018.

4. The second defendant filed written statement denying most of the averments of the amended plaint, except pendency of suit in O.S.No.305/2011 filed by the plaintiffs and took the following contentions:

The defendants in OS.No.305/2011 on the file of learned Principal Junior Civil Judge, Anantapuramu i.e., Pathipati Chinna Madannagari Narayanappa, P.Subba Naidu, P.Vijay Kumar are co-owners and cousins of plaintiffs. The defendants herein are no way concerned with the said defendants in O.S.No.305/2011. The plaintiffs are the defendants in O.S.No.305/2011, are also no way concerned with the said suit schedule rasta. In fact, the suit schedule rasta is the absolute rasta of the defendants i.e., their private Rasta left for their convenience to reach their lands. The plaintiffs or anybody else have no right to pass through the said Rasta. By suppressing the material facts, the plaintiffs obtained interim injunction orders in O.S.No.305/2011 and trying to pass through the private Rasta of the defendants. The plaintiffs have no right or title or possession over the said Rasta. The plaintiffs and other Villagers are aware that the disputed Rasta is the private Rasta and exclusively belongs to the defendants. The learned Advocate Commissioner's report filed in I.A.No.1158/2011 filed in the present suit clearly supports the case of the defendants. The learned Advocate Commissioner also found that there is no plan marked Rasta, as alleged by the plaintiffs. The Revenue Authorities also confirmed the same. The plaint plan filed by the plaintiffs is incorrect. It is not reflecting the facts. The joint family properties of the plaintiffs are

situated in Sy.No.529-2, just abutting to the house of the plaintiffs. The plaintiffs can pass through the said Rastha to reach their lands from their houses directly. The said Rastha is very convenient to pass through the said Rastha. The report of the learned Advocate Commissioner also clearly shows that the plaintiffs suppressed the said fact and trying to claim the defendants' Rastha. The plan filed by the defendants clearly shows that there is road from Narpala to Yellutla Village (A to B) and the Village road from the house of plaintiffs to the road (C to D) and the Rastha which is abutting to the lands in Sy.No.527 and 528 (E to F), is left by the defendants for their convenience to reach to their lands and it is their exclusively private Rastha. It is a well known fact that the plaintiffs herein are obstructing the cultivation of lands of one P.Subba Naidu, who is their co-owner, for which the disputes arose and a criminal case was also registered against the first plaintiff and his family members for the offence punishable under section 307 of Indian Penal Code and the same is pending. The plaintiffs have criminal background and have the support of influential elements and number of cases were registered against them. The defendants are law abiding citizens. The plaintiffs approached the Court with unclean hands. They have no bonafide grounds.

Since, the plaintiffs have lands abutting to their houses and they have another Rastha, which is mentioned as **J** to **K** in the plan filed by the defendants to reach to their lands, they cannot claim another Rastha. The plaintiffs filed the suit to knock away the absolute rights of the defendants over the alleged private Rastha i.e., suit schedule rastha. Hence, the suit is liable to be dismissed.

5. The other defendants filed memo, adopting the written statement of the second defendant.

6. Taking into consideration of the pleadings of both plaintiff and defendants and material on record, the trial Court framed the following issues for trial:

1. Whether there is plan marked ABCD Rastha between Yellutla to Chillavaripalli, as shown in the plaint rough plan to reach the lands in Sy.No.529/2 and 529/3 or not ? (OPP)

2. If so, whether the plaintiffs are entitled for declaration of right to reach their lands in Sy.No.529-2, 529/3 through the said plan marked ABCD Rastha between Yellutla to Chillavaripalli or not ? (OPP)

3. Whether the plaintiffs, in the event that their right to use the said ABCD Rastha declared is entitled for consequential permanent injunction restraining that the defendants from interfering with their use of ABCD Rastha as shown in the plaint plan or not ? (OPP)

4. To what relief ?

7. During the course of trial before the trial Court, on behalf of plaintiffs, PW.1 was examined and also got marked Ex.A1 to A9 on their behalf. On behalf of defendants, Dws.1 to 3 were examined and also got marked Ex.B1, B2 and Ex.C1 on their behalf.

8. On hearing both the sides and taking into consideration the pleadings and evidence on record, on merits, the trial court decreed the suit with costs.

9. Aggrieved by the said judgment and decree of the trial Court, the unsuccessful defendants had preferred the present appeal and have urged the following grounds of appeal:-

1. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs shall file the suit under easement act as they have no clarity that the alleged suit rastha is plan marked rastha or private rastha.
2. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs filed a suit for declaration and for permanent injunction to the alleged suit rastha and the pleadings and evidence of the respondents/plaintiffs is that the alleges suit rastha is plan marked rastha. But the trial court did not frame any issue, that the alleged rastha is a plan marked rastha or not?
3. The appellants submit that once the respondents/plaintiffs pleaded that the alleged suit rastha is plan marked rastha, it is the duty of the respondents/plaintiffs to prove the same. But the respondents/plaintiffs failed to prove the same that the alleged rastha is the plan marked rastha. The trial court failed to observe the same and passed judgment mechanically. Once the respondents/plaintiffs failed to prove the alleged rastha is plan marked rastha, they have to prove that they are using the said rastha as per easement. The trial court ought to have seen that there are no pleadings in the suit under easement act and the suit itself is liable to be dismissed.
4. The appellants submit that the trial court ought to have seen that the alleged rastha exclusively belongs to appellants and the respondents/plaintiffs herein are nothing to do with the said rastha. It is supported by Ex: B-1 and Ex B-2.
5. The appellants submits that the trial court ought to have compared the rough plan filed by the plaintiffs i.e. Ex A-1 and the rough plan filed by the defendants i.e. Ex B-1 before came to the conclusion.

6. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs and their coparceners are the absolute owners of the land in Sy. No. 529/1, 529/2 & 529/3 of Gugudu village field. Admittedly there is a cement road in front of the house of respondents/plaintiffs and the land in Sy.No 529/1, 529/2 & 529/3 of Gugudu village field are situated on eastern side of the said cement road (during the cross examination PW-1 admitted). It is clearly established that the plaintiff's land in Sy. No.529/1, 529/2 & 529/3 of Gugudu village field are just abutting to the cement road and very near to their house and the respondents/plaintiffs claiming the alleged plaint rasta is not justifiable in any manner. The PW-1 also admitted during the cross examination that he has to reach his land in Sy. No.529/2 from his house. Once his land in Sy. No.529/2 is abutting to the cement road which is in front of his house, the question of claiming the alleged suit rasta which is situated far away to his house is against law and not justifiable.
7. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs have no manner of right in Sy. No.527 & 528 of Gugudu village field and the alleged rasta. The respondents/plaintiffs mentioned in their plaint that the appellants shifted the plan marked rasta for their convenient, but the trial court did not frame any issue relating to that aspect and respondents/plaintiffs did not place any oral or documentary evidence to show that appellants shifted the plan marked rasta. It is also ignored by the trial court and passed judgment basing on the presumptions.
8. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs have not pleaded that they have been using the alleged rasta since time immemorial or from a particular period continuously, uninterruptedly to the knowledge of one and all. But the trial court came to conclusion that the respondents/plaintiffs are using the rasta more than 40 years. Without any pleading or evidence how the trial court came to conclusion that the respondents/plaintiffs using the alleged rasta more than 40 years. It is clearly shows that the trial court judgment is not correct legally and passed only basing on presumptions.

9. The trial court ought to have seen that the respondents/plaintiffs pleaded in plaint as well as in the evidence that the alleged rastha is plan marked rastha and the alleged rastha is changed by the appellants for their convenient. Accordingly, the respondents/plaintiffs have no clarity about their case and not come to the court with definite pleadings. In fact no neighboring land owner or any of the person in the village was examined to support the case of PW-1. But the trial court ignored the said material aspect and passed judgment mechanically.
10. The appellants submit that the trial court completely depend upon in I.A.No.532/2011 in O.S.305/2011 which is filed by the respondents/plaintiffs against one P.C.M.Narayanappa & others who are the land owners of Sy. No.529/3 of Gugudu village field. In fact, the appellants are not parties in the suit and the defendants in O.S.305/2011 are not claiming the alleged rastha in the present suit.
11. The appellants submit that the trial court ought to have seen that the advocate commissioner's report in the present case, but the trial court more importance to the advocate commissioner's report filed in O.S.305/2011. In fact, the advocate commissioner was appointed in O.S.305/2011 in an ex-parte order at initial stage and the advocate commissioner was appointed in the present case on merits. But the trial court gave much importance to the advocate commissioner's report in O.S.305/2011 and ignored the commissioner's report in the present case and passed judgment mechanically. It is highly objectionable and against law.
12. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs filed in I.A.1351/2012 in O.S.494/2011 for interim injunction and same was dismissed by the trial court on merits and the respondents/plaintiffs filed C.M.A.24/2014 before the Hon'ble District Judge, Ananthapuramu and the same was dismissed. It is clearly shows that the respondents/plaintiffs have no prima facie case and balance of convenience is not in their favour.

13. The appellants submit that the trial court completely relied on Ex A-5 to A-7. But the trial court ought to have seen that Ex B-2 is very much prior to the Ex.A5 to A7 and Ex B-2 absolutely belongs to Sy.No.529/1, 529/2 & 529/3 of Gugudu village field and it is clearly established that there is a clear rasta to reach from Sy.No 529/1 to 529/3. In the said circumstances, the respondents/plaintiffs claimed the ABCD rasta in the plaint is not correct and against law and with intention to harass the appellants.
14. The appellants submit that the trial court ought to have seen that the respondents/plaintiffs claimed the rasta in O.S.305/2011 and in the present case to reach their lands in Sy.No. 529/2 & 529/3. It is clearly answered by Ex.B-2. But the respondents/plaintiffs suppressed the said material facts and falsely claiming the rasta of the appellants situated in Sy No.527 & 528.
15. The appellants submit that the trial court ought to have seen that there is no clarity in the rough plan i.e. Ex A-1 filed by the respondent/plaintiff. But the rough plan filed by the appellants i.e. Ex B-1 is very in all aspects and PW-1 also admitted all the particulars mentioned in Ex B-1 during cross examination.
16. The appellants submit that the trial court ought to have seen that the advocate commissioner mentioned in his report that there is a fencing with thorny bush at the entrance place of the alleged rasta. It is clearly shows that it is private rasta of the appellants. If it is public rasta, the public not allowed for fencing to the sad rasta. But the trial court ignored the said material aspects and passed judgment.
17. The appellants submit that there is another rasta from main road to land in Sy.No.529/1 and it is clearly mentioned in Ex B-1 and it is also very near to the respondents/plaintiffs lands. PW-1 did not deny when the appellant counsel put a suggestion during the cross-examination of PW-1. It is also clearly established that the respondents/appellants have another rasta apart from the rasta mentioned in the Ex B-2. PW-1 also admitted during the cross examination that he has to reach his land in Sy.No.529/2 from his house. As seen from the Ex.B-1 and B-2 the respondents/plaintiffs have clear rasta to reach their lands situated in Sy. No.529/1,

529/2 & 529/3 of Gugudu village field from their house and also another rasta to reach their lands from main road and it is clearly mentioned in Ex.B-1 and shown as J to K in Ex B-1. In the said circumstances, the respondents/plaintiffs claiming the alleged suit rasta is not tenable and against law and the judgment passed by the trial court is liable to be set aside.

18. The appellants submit that the trial court depend upon Ex A-9 i.e. Village Map and commented that there is a plan marked rasta in Sy.No. 527 & 528. But the PW-1 admitted that the alleged suit rasta is not plan marked rasta and the advocate commissioner and Mandal Surveyor also supported that the alleged suit rasta is not plan marked rasta. In the said circumstances, how the trial court taken into consideration of Ex.A-9 and passed judgment against the appellants.
19. The appellants submit that as seen from the judgment, the trial court totally confused and completely depended on presumption and did not appreciate the case of the appellants and absolutely failed to observe the basic principles that the plaintiff shall come to court with clean hands and the plaintiffs did not depend on the weakness of the defendants/appellants. In the present case the respondents/plaintiffs absolutely failed to prove their case and they suppressed the material facts and they did not examine any of the witnesses to support the case of the PW-1. In the said circumstances, the respondents/plaintiffs did not entitled for any relief and the judgment passed by the trial court is liable to be set aside and allow the appeal filed by the appellants.
20. The appellants submit that the respondents/plaintiffs did not value the the suit correctly and did not pay court fee correctly in the trial court and no issue is framed and the suit is liable to be dismissed.

10. Now the points that arise for determination in this appeal are:

1. **Whether the decree and judgment passed by the trial Court in O.S.No.494/2011, dt.10.03.2020 is according to law and whether there are any irregularities or infirmities in the judgment of the trial Court?**
2. **Whether the decree and judgment of the trial Court warrants interference by the Appellate Court?**
3. **To what relief?**

11. The parties are arrayed as per nomenclature as referred in the trial court suit proceedings, for convenience and clarity.

12. The Court heard the submissions of the learned counsel for appellants and respondents.

13. POINTS No.1 AND 2:-

The learned counsel for the respondents/plaintiffs has submitted that the first plaintiff is the brother-in-law (husband's brother) of the second plaintiff, one Madenna S/o late P. Aswarthamaiah had three sons i.e., first plaintiff, Late Narayana Swamy and Venkata Naidu. The said P.Aswarthamaiah purchased the land to an extent of Ac.1.00 cents in Sy.No.529-3 of Gugudu Village with specific boundaries from Kesanapalli Venkatappa S/o Chinna Venkataramaiah of Gugudu Village for a valuable consideration. The said Madenna and another also purchased land in an extent of Ac.2.78 cents with specific boundaries in Sy.No.529-2 under cover of original of Ex.A.1, dt.09.03.1964. After the demise of

the said Madenna, his $\frac{1}{2}$ share in land in Sy.No.529-2 of Gugudu Village devolved upon the plaintiffs and P.Venkata Naidu. Subsequently, in the oral partition, the said property devolved upon the first plaintiff. P.Venkata Naidu got land in Sy.No.529-1 under the said partition. As the suit is related to the Rastha abutting to the land in Sy.No.529-2 and 529-3, the said P.Venkata Naidu is not added as a party to the suit before the trial Court.

It is further contention of the learned counsel for the respondents/plaintiff's counsel that as per the recitals of the registered sale deed, dt.09.03.1964 under cover of Ex.A.7, the eastern boundary is Rastha leading to Tadipatri Village, which is shown as Rastha from Yellutla to Chillavaripalli. It is a plan marked Rastha of the Village plan of Gugudu Village. Previously, the plaintiffs herein filed a suit against Pathipati Chinna Madannagari Narayanappa, Pathipati Subba Naidu and Pathipati Vijay Kumar under OS.No.305/2011 on the file of Principal Junior Civil Judge' Court, Anantapur as they tried to obstruct the passage rights of the plaintiffs through the disputed rastha, which is abutting to Sy.No.529 on its eastern side and the said suit is still pending before the III Addl. Judl. Magistrate Court-cum-Excise Magistrate, Anantapuramu for consideration. But the Principal Junior Civil Judge, Ananthapuramu granted temporary injunction in the said suit under I.A.631/2011 on 10.10.2011 in favour of the plaintiffs restraining the respondents and their men from interfering with the usage of the rastha at points ABCD shown in the plaint plan by the petitioners to reach their lands situated in Sy.Nos.529/2, 529/3 of Gugudu village lands until disposal of the suit under cover of Ex.A.2 public copy of the order of the said Court. The Village plan disclosed that the said rastha passes in the middle of the lands and the said Rastha has been shifted towards western side of the land abutting to the lands in Sy.No.529 and 539, adjoining vanka canal for the past 40 years.

14. It is their further contention that the 1st defendant is the father of the defendants 2 and 3 and they have got land in Sy.No.527 abutting to the said Rastha i.e., ABCD of the plaint plan on the eastern side and there are Banana plantations abutting to their respective lands. The defendants Nos.4 to 6 owned the land in Sy.Nos.527, 528 and 539 as per the plaint plan. There is black top road in the Sy.No.539 of Gugudu Village and there is deviation of Rastha from Black Top road, which passes through the lands in Sy.No.539, 527 and 528 to reach to the lands of the plaintiffs.

15. It is further contention of the plaintiffs that by colluding with the defendants in OS.No.305/2011 on the file of Principal Junior Civil Judge' Court, the defendants Nos.1 to 6 in the present suit are trying to put thorny tree cuttings in the Rastha with a malafide intention to prevent the plaintiffs from making usage of ABCD Rastha without any manner of right and title. The plaintiffs have no other alternative way to reach the said lands i.e., the said ABCD rastha. As the defendants are powerful persons in the Village, the plaintiffs requested the defendants not to obstruct their usage of Rastha, but the defendants not heeded the words of the plaintiffs. More over the defendants have also constructed a stone wall abutting Rastha on its eastern side to safeguard their Banana garden in Sy.No.528 and 529. The defendants have no absolute rights with regard to the suit schedule rastha and the defendants are with the help of anti social elements and unruly mob trying to obstruct the plaintiffs to take ingress and egress through the said rastha. Hence, the plaintiffs obliged to file the suit for declaration of their right making usage of ABCD rastha and subsequently permanent injunction restraining the defendants from obstructing them to reach their land through said rastha in Sy.No.529-2 and 529-3 of Gugudu village.

16. The learned counsel for the appellants submitted that the defendants in OS.No.305/2011 on the file of learned Principal Junior Civil

Judge, Anantapuramu are co-owners and cousins of plaintiffs. Therefore, the defendants herein are no way connected to the said suit in O.S.No.305/2011 and in fact, the suit schedule ABCD rasta is the absolute Rasta of the defendants i.e., their private Rasta to reach their lands. The plaintiffs or anybody have no right to pass through the said Rasta. The plaintiffs and other Villagers are pretty well that the disputed Rasta is the private Rasta and exclusively belongs to the defendants. A Commissioner, namely Sri E.Balakrishna, Advocate was appointed as per orders in IA.No.1158/2011 and the Commissioner visited the suit schedule property and filed his report before the trial Court. But the learned Commissioner found that there is no plan marked Rasta, as alleged by the plaintiffs and the Revenue Authorities also confirmed the same. So, the plaint plan filed by the plaintiffs is incorrect.

17. It is further contention of the defendants that the joint family properties of the plaintiffs are situated in Sy.No.529-2, just abutting to their houses, the plaintiffs can pass through the said Rasta to reach their lands from their houses directly. The said Rasta is very convenient to pass through the said Rasta. But the plaintiffs suppressed the said fact and trying to claim the exclusive rasta of the defendants. The plaintiffs are obstructing the cultivation of lands of one P. Subba Naidu, who is their co-owner, for which the disputes cropped up in between Subba Naidu and the plaintiffs and thereby a case was registered against the 1st plaintiff and his family members under section 307 of Indian Penal Code and the case is pending and the plaintiffs have criminal background and have the support of anti social elements and since the plaintiffs have lands abutting to their houses, they have another rasta, which is mentioned as **J** and **K** in the plaint plan to reach their lands, they cannot claim another rasta and the plaintiffs filed the suit only to knock away the absolute rights of the defendants over the private rasta i.e., ABCD marked portion.

18. The learned counsel for appellant submitted the dictum **Civil Appeal No.9642 of 2010 Supreme Court held in between Manisha Mahendra Gala & others Vs. Shalini Bhagwan Avatramani & others.**

The said dictum is not applicable to the case on hand as the facts and circumstances narrated in the said dictum is quite different to the case on hand.

19. On reappraisal of the rival contentions of both the parties i.e., oral evidence coupled with documentary evidence, the trial Court is at length discussion with regard to the rights of both parties as to the suit rasta is concerned. As seen from Ex.A.3 Commissioner's report, it clinchingly establishes that there is a deviating rasta i.e., the rasta in dispute passing north to south to the main road i.e., Yellutla to Gugudu village. The Commissioner and Mandal Surveyor reported that the said rasta in dispute is not a plan marked rasta and it was left by the ryots as per their convenience, since the time immemorial and all the parties admitted that it is the only rasta being used by everybody. Moreover, as per the Field Measurements book, it was observed that vanka is in Sy.No.529 and rasta is in Sy.No.528 at the disputed portions are existing and the Commissioner further observed that there was unfinished road layer to the disputed portion, which is very adjacent to the rasta.

20. More over, D.W.1 admitted in the cross-examination that he was also present at the time of inspection of Advocate Commissioner in O.S.305/2011, he has also admitted that the rasta in dispute in the present suit and the suit in O.S.305/2011 are one and the same. But his contention is that he was exclusively left by them. D.W.1 admitted in his cross-examination that his father purchased the property under cover of Ex.A.6 and its link document is Ex.A.5. In the said document, the eastern boundary of the said land covered under those two sale deeds is rasta and there are

no specific recitals in Exs.A.5 and A.6, that the said rasta is their exclusive rasta and except those two documents, there are no other documents regarding the ABCD rasta in dispute. So, in the absence of any such recitals about the exclusive right of vendors of first defendant's father in Exs.A.5 and A.6, it is unsafe to declare that the said rasta i.e, ABCD as shown in the plaint plan is a private rasta of D.1, as such the trial court presumed that the ABCD rasta is a public rasta.

21. As per Ex.B.2 Certified copy of extract of registered sale deed, dt.31.01.1958 executed by Kesanapalli Ramappa in favour of Pathipati Lingamma W/o Aswarthama [paternal grandmother of plaintiff No.1]. As per the contents of Ex.B.2, Kesanapalli Ramappa i.e., predecessor in title of the defendants sold an extent of Ac.1-50 cents in Sy.No.529/3 of Gugudu village. As per the said document, the right to usage of cart track to go to the land in Sy.No.529/3 from the lands in Sy.No.529/2 and Sy.No.529/1. So, the documents of the defendants itself disclosing that the said ABCD rasta is existing since time immemorial and it is not stated at anywhere in the documents of the defendants that it is a private rasta and exclusively belongs to the defendants. As per combined sketch filed along with the Commissioner's report in O.S.305/2011, it clearly reflecting the vanka as well as cart track. At prevention place to take ingress and egress is also shown in the combined sketch filed by the Commissioner, who filed his report in O.S.305/2011.

22. From the oral and documentary evidence filed by the defendants, the exact location of the land covered under Ex.B.1 is not reflecting on ground. The Commissioner, who was appointed before the trial Court in O.S.305 of 2011 and O.S.No.494/2011 has clearly and categorically stated that there is no clear rasta, which is shown as **J** and **K**, as shown in the defendant's plan. The Commissioner has also further

stated that eastern bank of vanka, there is a continuous wall with a height of about 2-3 feet which is found to be fallen down near point **D** of the plaint plan, gross and plants were found to be recently uprooted near point **D** and some thorny fencing is located in points A, B as per plaint plan rastha.

23. The defendants have no documents to show that they have a rastha exclusively belongs to them, as per recitals of their documents. Therefore, undoubtedly, the plaintiffs and defendants, who acquired their respective lands from the common vendors, have right to use that rastha, which is situated in the middle of their lands. As the said rastha as shown in the plaint plan i.e., ABCD is existing for the last several decades and the said rastha is existing to take ingress and egress of both parties to reach of their respective lands. But the plaintiffs failed to adduce any rebuttal evidence, no piece of documents filed by the defendants that the said rastha under ABCD belongs to them and the trial Court has rightly passed the decree infavour of the plaintiffs declaring the right of the plaintiffs to use the ABCD rastha to reach to their lands in Sy.Nos.529-2 and Sy.No.529-3 of Gugudu village by granting consequential permanent injunction restraining the defendants, their men and agents from obstructing the plaintiffs to use the said ABCD Rastha of the plaint plan.

24. When the plaintiff's right of way was without prejudice to the rights, if any, of other members of the public, in respect of the disputed land, the plaintiffs were declared to have the right of way over the disputed land along with other members of the public in exercise of their right if any. For which this court relying upon a dictum reported in **(1962) 4 Orissa JD 13**.

25. The 1st plaintiff examined as P.W.1 before the trial Court and 1st defendant examined as D.W.1 before the trial Court. Even the defendants examined one P.Chinna Kullayappa as D.W.2 and Sri E.Bala Krishna

[Advocate commissioner] as D.W.3 and their evidence is no way concern to the case of the defendants. The plaintiffs filed plethora of records before the trial Court. The trial Court after considering all the material evidence oral and documentary has come to the above conclusion with sound and judicious principles and passed the decree by following the principle of natural justice and this court is not find fault in the findings of the trial Court. The submissions made by the learned counsel for the appellants are not convincing and there are no plausible and cogent reasons to interfere with the impugned judgment of the trial Court. Hence the judgment of the trial Court in O.S.494/2011 dated 10.3.2020 is hereby confirmed and ultimately the appeal is liable for dismissal. Accordingly, the points 1 and 2 are answered.

26. POINT No.3::-

In the result, the Appeal is dismissed by confirming the Decree and Judgment of the trial Court passed in O.S.494/2011 dt.10.03.2020 on the file of the I Additional Junior Civil Judge, Ananthapuramu. No order as to costs in the facts and circumstances of the case.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in open court, on this the 19th day of June, 2024.

Prl. District Judge,
Ananthapuramu.

Appendix of evidence

NIL

Prl. District Judge,
Ananthapuramu.

Copy to: The I Additional Junior Civil Judge, Ananthapuramu
(O.S.No.494/2011, dt.10.03.2020)