



CNR: KAHC010405932019

NC: 2026:KHC:49767
WP No. 41438 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 41438 OF 2019 (GM-CPC)

BETWEEN:

1. SRI. SUDHEESH .N
S/O. JAYANANDA,
AGED ABOUT 42 YEARS
R/AT BAGE VILLAGE, BELAGODU HOBLI,
SAKALESH PURA TALUK, HASSAN DIST-573201.
...PETITIONER

(BY SRI. H.J. ANANDA, ADVOCATE)

AND:

1. SRI. SADANANDA
S/O. JOGAPPA BONTRA,
AGED ABOUT 74 YEARS
R/AT ARASU NAGARA, YADEHALLI VILLAGE,
BELAGODU HOBLI, SAKALESH PURA TALUK,
HASSAN DISTRICT-573201.
...RESPONDENT

(BY SRI. PRAKASH M. PATIL, ADVOCATE FOR C/R)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 30.07.2019 IN M.A.NO.9/2019 PASSED BY THE COURT OF SENIOR CIVIL JUDGE AND JMFC, SAKALESH PUR VIDE AT ANNEXURE-A.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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SACHIN SHANKAR MAGADUM
Verified





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CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The present writ petition is directed against the divergent orders passed by the Courts below on the application filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, "CPC"). The learned Trial Judge, upon consideration of the *prima facie* material placed on record by both parties and, in particular, taking note of the sketch produced by the defendant, declined to grant an order of temporary injunction and rejected the application. The learned Appellate Court, however, proceeded on the premise that the *prima facie* material relied upon by the defendant was fabricated and, consequently, allowed the appeal preferred by the plaintiff. The order of the learned Trial Judge was thereby reversed and an order of temporary injunction came to be granted, restraining the

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present petitioner/defendant from claiming access through the disputed road.

2. Having heard the learned counsel appearing for the parties and having perused the material on record, this Court has also adverted to the observations made by this Court in the earlier round of litigation in W.P.No.46116/2018. This Court, in paragraph 9 of the said order, has specifically noticed that the present respondent, who was the plaintiff and petitioner in the earlier round of litigation, had himself produced a sketch depicting the existence of a 20 feet road in Sy.No.207/2C. It would be apposite to extract paragraph 9 of the said order, which reads as under:

"9. The lower appellate Court, while confirming the order passed by the Trial Court, in categorical terms recorded a finding that, in order to prove his possession in respect of item No.2, the plaintiff mainly relied upon the photos. The third defendant produced true copy of the sketch which shows that 6.25 metres (20 feet) is demarcated to reserve as

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cart track in Sy.No.207/2C. The said sketch is issued from the office of the first defendant. The plaintiff has also produced a copy of sketch dated 14.02.2017. The same also shows the existence of 20 feet road in Sy.No.207/2C and Sy.No.208. The argument of the plaintiff that there is no such road in the suit schedule properties, cannot be accepted."

3. The above observation assumes considerable significance in the present proceedings. Both parties are relying upon sketches stated to have been issued by the competent authorities. While the sketch relied upon by the respondent/plaintiff is sought to be pressed into service to contend that no such cart road exists, the sketch produced by the petitioner/defendant *prima facie* indicates the existence of a 20 feet road. More importantly, the existence of such a road has already been noticed by this Court in the earlier round of litigation. Therefore, at the interlocutory stage, the competing versions of the parties could not have been conclusively determined merely on

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the basis of the rival contentions advanced before the Appellate Court.

4. Be that as it may, the photographs produced by the petitioner/defendant at Annexure-K3 also *prima facie* indicate the physical existence of a road at the spot. The respondent/plaintiff disputes the existence of suit road and contends that the road came to be laid only subsequent to the institution of the suit. This rival assertion, in the considered opinion of this Court, raises a factual controversy which necessarily requires proper adjudication on the basis of evidence. When the photographs *prima facie* disclose the existence of a road and the earlier order of this Court also records the existence of a 20 feet road in the relevant survey numbers, it would not be appropriate to conclusively determine the disputed factual issue at the stage of consideration of an application under Order XXXIX Rules 1 and 2 of CPC. The plaintiff, therefore, has to be

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relegated to a full-fledged trial for establishing the nature, origin and legal character of the disputed road.

5. This Court is also of the view that, in the facts and circumstances of the present case, grant of an order of temporary injunction in favour of the respondent/plaintiff would cause greater prejudice to the petitioner/defendant. The petitioner asserts a right of access through the disputed road, the existence of which is *prima facie* demonstrated by the photographs produced on record. The specific contention of the respondent/plaintiff that the road was formed subsequent to the institution of the suit is itself a matter which requires adjudication by the learned Trial Court. Unless and until the respondent/plaintiff establishes, by cogent evidence, that the disputed road forms part of the land granted in his favour and that the petitioner has no right whatsoever to use the same as an access road, an interlocutory order completely restraining the petitioner

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from claiming such access would not be justified. At this stage, therefore, the balance of convenience cannot be said to lie in favour of the respondent/plaintiff.

6. The learned Appellate Court, while exercising its appellate jurisdiction over an interlocutory order, was required to examine whether the discretion exercised by the learned Trial Judge was arbitrary, perverse or contrary to the settled principles governing grant of temporary injunction. Instead, the learned Appellate Court has proceeded to discard the *prima facie* material produced by the petitioner/defendant by observing that the same are created documents. Such a conclusion, particularly in the backdrop of the earlier observations made by this Court and the material indicating the existence of the road, could not have been recorded at the interlocutory stage without there being proper evidence to conclusively establish that the documents relied upon by the petitioner are fabricated.

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7. The observations made by this Court in W.P.No.46116/2018, coupled with the material presently placed on record, particularly the photographs produced by the petitioner/defendant and the reference to the existence of a road in the grant order in favour of plaintiff, clearly demonstrate that the issue regarding the existence and nature of the disputed road is a seriously contested question of fact. The respondent/plaintiff cannot, at the interlocutory stage, seek to foreclose the petitioner's asserted access merely on the basis of his own disputed interpretation of the documents. The impugned order passed by the learned Appellate Court, therefore, cannot be sustained.

8. It is necessary to reiterate that the observations made herein are confined strictly to the consideration of the application under Order XXXIX Rules 1 and 2 of CPC. This Court has not expressed any final opinion on the title to the disputed property, the precise

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location or legal character of the road, the date on which the road came into existence, or the respective rights of the parties to use the same. All such questions are matters for adjudication by the learned Trial Court upon appreciation of the oral and documentary evidence that may be adduced by the parties.

9. For the foregoing reasons, the writ petition succeeds. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***allowed***.

(ii) The impugned order dated 30.07.2019 passed in M.A.No.9/2019 by the Court of Senior Civil Judge and JMFC, Sakaleshpur vide Annexure-A, is hereby set aside. Consequently, the order passed by the learned Trial Court on I.A.No.2 stands restored and the application filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 of the CPC stands rejected.

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(iii) It is, however, made clear that the observations made by the learned Trial Court in O.S.No.60/2019 and the observations made by this Court in the present proceedings are confined strictly to the adjudication of I.A.No.2 and shall not prejudice the rights and contentions of the respondent/plaintiff in the suit.

(iv) The respondent/plaintiff shall be at liberty to establish, in the full-fledged trial, his claim regarding the disputed road, including his contention that the road forms part of the granted land and that the petitioner/defendant has no right to use the same as an access road.

(v) All contentions of the parties are kept open to be urged and adjudicated upon by the learned Trial Court in accordance with law, uninfluenced by any of the observations made in this order.

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**(SACHIN SHANKAR MAGADUM)
JUDGE**

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List No.: 1 Sl No.: 8