



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1795 OF 2025 (DEC/INJ)

BETWEEN:

1. SMT.M G PARVATHY
W/O SRI M K GANAPATHY
AGED ABOUT 58 YEARS
2. SRI M K GANAPATHY
S/O LATE KALAPPA,
AGED ABOUT 61 YEARS,

BOTH ARE RESIDING AT
MATHUR VILLAGE,
PONNAMPET POST,
PONNAMPET TALUK
KODAGU - 571 216.

...APPELLANTS

(BY SRI ABHISHEK HUDDAR, ADVOCATE)

AND:

MAHILA SAHAKARA SAMAJA
NO.461, PONNAMPET TALUK
KODAGU-571216
REP. BY ITS PRESIDENT
SMT.IMMI UTHAPPA
W/O CHIRIYAPANDA UTHAPPA
AGED ABOUT 70 YEARS
R/A PONNAMPET,
KODAGU - 571 216.

...RESPONDENT

(BY SRI I.S. DEVAIAH, ADVOCATE)

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 27.09.2025 PASSED IN RA NO.3/2025 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, VIRAJPET.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Though matter was listed for admission, since records were received and both learned counsel submitted their readiness to argue for final disposal of appeal on proposed substantial questions of law, matter was heard affording opportunity to both sides.

2. Challenging judgment and decree dated 27.09.2025 passed by Senior Civil Judge and JMFC, Virajpet, in RA no.3/2025, this appeal is filed.

3. Sri Abhishek Huddar, learned counsel for appellants submitted, appellants were plaintiffs in OS no.67/2019 filed seeking for permanent injunction restraining defendant their men, agents etc., blocking or obstructing and for declaration of



plaintiffs' easementary right over 'B' schedule road to reach suit 'A' schedule land.

4. In plaint, it was stated that plaintiffs were absolute owners in possession and enjoyment of land measuring 0.21 cents of Coffee Estate along with residential house situated in Sy.no.8/27, Khata no.13 of Mathur village, Ponnampet Hobli, Virajpet Taluk (**'A' schedule**, for short). And even earlier, mother of plaintiff no.1 was in possession of 'A' schedule from 1971 presuming it to be paisary land. She had also filed application to Government for grant of 20 cents in land in Sy.no.8/15 of Mathur village and under order no.NCR/168/84-85 dated 26.04.1985, Tahsildar, Virajpet had granted said land. However, at time of survey, it was later found that mother of plaintiff no.1 was in possession of land bearing Sy.no.8/27 belonging to Puchimada K. Thimmaiah and others. Therefore, Government grant was cancelled. Thereafter, plaintiff purchased said land under registered Sale Deed dated 11.12.2014 from Puchimada K. Thimmaiah and others.

5. It was further stated that there was a road in 'A' schedule, used by plaintiffs and their predecessors, as



easement of necessity and which was used uninterruptedly from time immemorial as only road to reach 'A' schedule. Said motorable road described in plaint as commencing from Ponnampet - Balele road touching KEB office passing in Sy.no.8/26 of Mathur village measuring 15 ft. in width and 100 ft. in length. (**'B' schedule**, for short).

6. It was stated, defendant was granted a portion of land in Sy.no.8/26 with specific condition not to obstruct existing road. And plaintiffs had a motorable road in 'B' schedule, defendant obstructed it exerted pressure and got plaintiffs to execute agreement to pay ground rent for use of road. Defendant also attempted to put-up a gate and block 'B' schedule road and obstruct right of necessity. Then, defendant stored constructing material and on 01.10.2019 demanded plaintiffs to keep their vehicle outside 'A' schedule, plaintiffs lodged police complaint for action against blocking of access road and thereafter filed suit.

7. On appearance, defendant filed written statement denying plaint averments in *toto* and opposed suit as not maintainable, not filed with clean hands and pleadings lacking material particulars and suit being filed without prior notice



mandated in law and as such defective. Plaintiffs' claim of title and possession over 'A' schedule was denied by disputing genuineness of Sale Deed dated 11.12.2014. Even claim of mother of plaintiff no.1 being in possession from 1971, grant of land in Sy.no.8/15, and its subsequent cancellation were also denied. It was contended that same would not in any case confer any right over property claimed by defendant.

8. Defendant categorically denied existence of 'B' schedule and contended plaintiffs were strangers to Sy.no.8/26. Claim of easement of necessity was denied as false and invented for purpose of suit. It was stated, 0.75 cents in Sy.no.8/26 was granted to defendant by Deputy Commissioner, Kodagu, under Rule 18 (3) of Karnataka Land Grant Rules, 1969. Pursuant to grant, *saguvali* chit was issued and mutations effected in favour of defendant. And that from said day, defendant was in exclusive possession of it and developed part of it as coffee plantation with remaining reserved for construction of Community Hall. It was further stated, defendant constructed labour quarters and security quarters and enclosed property with compound wall, metal gate and barbed wire fencing.



9. It was stated, plaintiffs were owners of land situated on northern side of Sy.no.8/26 and had alternative access road through property of CESCO connecting to Balele – Ponnampet road and which according to defendant, plaintiffs were using for ingress and egress from time immemorial and therefore, their property was not landlocked.

10. It was stated, during construction of new house, plaintiffs sought permission to store construction material temporarily in about 400 sq.ft. of Sy.no.8/26 and same was permitted on humanitarian grounds with clear stipulation that no permanent right was created. Accordingly, after completion of construction, materials were removed. Thus, plaintiffs were never permitted to enter or use property of defendant.

11. But after filing suit, plaintiffs trespassed into Sy.no.8/26 by breaking open lock on metal gate, damaged portion of barbed wire fencing and parked their vehicle inside property. Immediately, defendant lodged police complaint, who warned plaintiffs not to interfere with property of defendant pending adjudication before Civil Court. But plaintiffs spread rumours that defendant damaged underground water pipeline,



causing monetary and reputational loss, for which defendant intended to initiate separate proceedings. Denying description of 'B' schedule, it was alleged no such road existed in Sy.no.8/26. And denying 'B' schedule was in plaintiffs' possession, it was contended suit was barred by limitation, bad due to non-joinder of necessary parties and plaintiffs had undervalued reliefs and paid insufficient court fee. For said reasons, defendant sought dismissal of suit.

12. Based on pleadings, trial Court framed following:

ISSUES

1. *Whether the plaintiffs prove that they are having easementary right over 'B' schedule road to reach the 'A' schedule property?*
2. *Whether the plaintiffs prove the alleged interference made by the defendant for using 'B' schedule road?*
3. *Whether the defendant proves that suit is not properly valued and court fee paid on plaint is insufficient?*
4. *Whether the defendant proves that 'B' schedule property does not exist and plaintiffs are not in possession and use of 'B' schedule property as contended in paragraph 13 and 14 of written statement?*
5. *Whether the defendant proves that they have permitted to use written statement schedule property to the plaintiffs only to store construction materials as contended in paragraph 10 of the written statement?*



6. *Whether the plaintiffs are entitled for the relief sought for?*
7. *What order or decree?*

13. In trial, plaintiff no.1 examined himself as PW.1 and got marked Exhibits P1 to P56. While defendant examined its then President as DW.1 and got marked Exhibits D1 to D14.

14. On consideration, trial Court answered issues no.1, 2 and 6 in affirmative, issues no.3 to 5 in negative and answering issue no.7, it decreed suit with cost. Aggrieved, defendant preferred RA no.3/2025 on various grounds. Based on same, first appellate Court framed following:

POINTS:

1. *Whether the plaintiffs proved that they have got right of easement of necessity over suit "B" schedule road for ingress and egress to reach suit "A" schedule property?*
2. *Whether the defendant proved that plaintiffs have alternative road to reach suit "A" schedule property?*
3. *Whether the Judgment and decree passed by the trial Court impugned in the present appeal requires interference at the hands of this Court?*
4. *What Order or decree?*



15. And answering point no.1 in negative, points no.2 and 3 in affirmative, it answered point no.4 by setting aside impugned judgment and decree and dismissed suit. Aggrieved, plaintiffs were in appeal.

16. It was submitted, judgment and decree passed by first appellate Court suffered from serious error in appreciation of evidence. Observation of first appellate Court in para-19 that documents produced by plaintiffs failed to identify 'A' schedule property was contrary to Exhibit P4 - RTC extract, clearly disclosing plaintiffs as co-owners of 21 cents in Sy.no.8/27. And even when, identity and existence of 'A' schedule property was never in dispute, first appellate Court erred in travelling beyond scope of appeal in doubting its existence and thereby erred in giving findings on matters not in controversy.

17. It erred in not appreciating contradictory stand taken by defendant. While in paras no.3 and 13 of written statement defendant denied existence of 'B' schedule and described plaintiffs as strangers to property, in cross-examination of DW.1, they admitted issuance of Exs.P1 to P3 letters stating that if Rs.9,00,000/- was not paid, road would be



closed, thereby admitting existence of road. And first appellate Court erred in not drawing adverse inference.

18. First appellate Court also erred in holding easement of necessity was unsustainable, when Exs.P55 and P56 photographs demonstrated that 'B' schedule was only motorable access to 'A' schedule and there was no alternative access for ingress and egress. It was contended, conclusion of first appellate Court was thus based on conjectures and not on evidence.

19. Further, DW.1 admitted execution of Ex.P54 - agreement between defendant and mother of plaintiff no.1. Said agreement revealed, defendant permitted usage of road and even undertook to hand over one set of keys of gate. Said admission established long-standing usage of road by plaintiffs and their predecessor. First Appellate Court, failed to properly consider evidentiary value of this document and admissions of DW.1.

20. Apart from above, Exs.P8 to P53 - Receipts, issued by defendant towards rent collected for use of road, established plaintiffs' use of 'B' schedule. Even assuming such collection



was illegal, very act of issuing receipts amounts to recognition of existence and usage of road. First Appellate Court failed to consider this crucial documentary evidence and admissions of DW.1 in this regard.

21. In support of his submissions, learned counsel relied on following decisions:

- i) **C. Venkata Swamy v. HN Shivanna and Anr.** reported in **(2018) 1 SCC 604**, for proposition that first appellate Court being final fact-finding Court, was duty bound to comply with Order XLI Rule 31 of CPC and independently re-appreciate entire oral and documentary evidence, failing which judgment would be vitiated
- ii) **Badat & Co.Bombay v. East India Trading Co.** reported in **1963 SCC OnLine SC 9**, for proposition that plea of 'not known' in written statement and testimony cannot be treated as denial in eye of law and amounts to non-traverse.
- iii) **Gopal Krishnaji Ketkar v. Mohamed Haji Latif & Ors.** reported in **1968 SCC OnLine SC 63**, for proposition that plea of alternate access through CESCO land was bald and unsubstantiated, hence adverse inference must follow.
- iv) **Brahma Nand v. Teju Ram (deceased) through his LRs** reported in **2018 SCC OnLine HP 3229**, to contend that first appellate Court failed to distinguish between prescriptive easement and customary easements warranting remand. It was submitted, though this Court would be empowered to decide said issue, such course should be avoided as it deprives valuable right of appeal to parties.



22. Based on above submissions, learned counsel prayed to answer following substantial questions of law in favour of plaintiffs and allow appeal:

- "1. Whether first appellate Court erred in denying easementary right of plaintiffs over 'B' schedule?
2. Whether first appellate Court failed to notice discrepancy in deposition of DW-1 and written statement?
3. Whether finding of first appellate Court about non-existence of 'B' schedule is contrary to Exs.P8 to P53 (receipts)?
4. Whether conclusion of first appellate Court is contrary to recitals in Ex.P54 - Agreement showing mother of plaintiffs was using 'B' schedule?"

23. On other hand, Sri IS Devaiah learned counsel for defendant opposed appeal. It was stated, plaintiffs specifically pleaded easement of necessity in plaint. And that it was not their case that right claimed was by grant, prescription, custom or otherwise. Therefore, entire claim must be tested strictly under Section 13 of Indian Easements Act, 1882 (**'Act'**, for short).

24. It was submitted, easement of necessity arises only when a single tenement is severed by transfer, partition or bequest and one portion cannot be enjoyed without imposing



burden on other. Such right presupposes prior unity of ownership between dominant and servient tenements and severance of such unity. In present case, defendant neither pleaded nor proved that plaintiffs' property were ever under common ownership. In absence of unity of title and severance, very foundation for claiming easement of necessity is lacking.

25. It was submitted, even assuming plea was maintainable, by referring to admission by PW.1 in cross-examination on 11.08.2022 that there existed Balele-Kirugoor road on western side of plaintiffs' property, i.e. availability of alternative access, it was contended necessity ceased and easement extinguished in view of Section 41 of Easements Act. It was submitted when burden of proving absence of alternative access lies on plaintiffs, trial Court erred in shifting such burden on defendant. Appellate Court reversed said error and rightly dismissed suit on said admission.

26. Likewise, by failing to produce Sale Deed dated 11.12.2014 – title deed and basis of plaintiffs' claim over 'A' schedule, they failed to establish identity and ownership of dominant tenement. Said omission being fatal, trial Court ought



to have drawn adverse inference. Even claim that mother of plaintiff no.1 was in possession since 1971 remained unsubstantiated. In fact, PW.1 admitted no document was produced to establish same and further admission that possession was taken only in year 2016, would also be fatal.

27. Even rent receipts and agreements produced by plaintiffs demolished their claim. Payment of rent for use of road established permissive use could not give rise to right of easement. It was submitted, easement of necessity would arise by operation of law and cannot co-exist with payment of rent. Further, trial Court erred in interpreting Exs.P1 to P3 as proof of absence of alternative access without there being any recital in them to indicate plaintiffs had no other access. Similarly, reliance on police complaint to establish long-standing usage was clearly misplaced. Therefore, conclusion of trial Court was without basis and as such perverse. Therefore, it was rightly reversed by first appellate Court.

28. In support of his submissions, learned counsel relied on following decisions:

- i) ***Sree Swayam Prakash Ashramam & Anr. v. G. Anandavally Amma & Ors. reported in (2010) 2 SCC 689, for proposition that plea of easement of***



necessity would not sustain when there exists alternative way.

- ii) ***Justiniano Antao & Ors. v. Bernadette B. Pereira*** reported in **(2005) 1 SCC 471**, to contend that minimum factors to be considered for holding acquisition of right of way by prescription was duration of such user for at least twenty years peacefully and uninterruptedly, without which plea of easement would not sustain.
- iii) ***Hero Vinoth (minor) v. Seshammal*** reported in **(2006) 5 SCC 545** for proposition that easement of necessity will last only till absolute necessity exists.
- iv) ***Manisha Mahendra Gala & Ors v. Shalini Bhagwan Avatramani*** reported in **(2024) 6 SCC 130** to contend when an alternative way to access dominant heritage exists even if it is little far or longer, it demolishes easement of necessity.
- v) ***Gopalbhai Jikabhai Suvagiya v. Vinubhai Nathabai Hirani*** [2018:GUJHC:40920] to contend that easement of necessity arises only when there is severance of two tenements.
- vi) ***Rukmani & Ors. v. Mohammed Yusuf & Ors.*** reported in **2017 SCC OnLine Mad 11557**, to contend that creation of easement of necessity is an outcome of prior relationship between tenements.
- vii) ***Maniyan Krishnan & Anr. v. Maniyan Nanukuttan*** reported in **1985 SCC OnLine Ker 258**, to contend that servient and dominant tenements were in common ownership and that dispossession, there was a cessation of that common ownership.

29. Lastly, questions raised in present appeal were purely factual in nature and relate to appreciation of evidence.



Therefore, no substantial questions of law arose for consideration and prayed for dismissal of appeal.

30. Heard learned counsel, perused impugned judgment and decree of both Courts.

31. This appeal under Section 100 of CPC is by plaintiffs against divergent findings in a suit for declaration of easement right over 'B' schedule and consequential relief of permanent injunction against defendant. And though various contentions are urged, appeal under Section 100 of CPC would be confined to examining whether any substantial question of law arise for consideration and there can be no reappraisal of evidence.

32. It is seen, trial Court took note of rival pleadings, noted admission by plaintiffs about defendant as owner of 'B' schedule. And plaintiff no.1 deposing as PW.1. It decreed suit on ground that though defendant was relying on admission about existence of road from Balele to Kirguru village on western side of plaintiffs' property, defendant failed to produce any document to establish alternative access to 'A' schedule and mere admission was not enough to establish existence of alternative approach. It also observed Exs.P1 to P3 (letters)



showed defendant offering plaintiffs to purchase 'B' schedule or exchange it for alternate land with threat to close access road corroborated by Ex.P5 - complaint referring to plaintiffs usage of 'B' schedule since 1974. It drew support from Exs.P8 to P53 - land rent receipts and recitals in Ex.P54 stating lack of alternative access to 'A' schedule. And on reasoning that there was no basis to support defendant's claim permitting plaintiffs to use 'B' schedule only to dump construction material or about plaintiffs using road through CHESCOM land.

33. While, first appellate Court proceeded on reasoning that since suit was filed for declaration of easementary right, initial burden was on plaintiffs to establish existence of to their property through 'B' schedule and also to establish 'A' schedule was landlocked. It observed, documentary evidence of plaintiffs namely, RTC extract and receipts did not substantiate boundaries of 'A' schedule. And failure to produce title deed of 'A' schedule, attracted drew adverse inference against plaintiffs. And there was no material to support plaintiffs claim that mother of plaintiff no.1 had filed application for grant of 20 cents of land in Sy.no.8/15 of Mathur village and Tahsildar had made grant, during survey, it was found that land in her



possession was Sy.no.8/27 belonging to someone else and therefore, grant was cancelled and thereafter she purchased 'A' schedule and was in possession from 1971.

34. It observed Section 13 of Act required plaintiffs to prove except passing through 'B' schedule, plaintiffs did not have any other access, and admission by PW.1 about existence of Balele - Kiruguru road on western side weakened their claim. And in view of material admission, failure of defendant to lead evidence on issues no.4 and 5 was not fatal, especially in absence of denial of defendant's assertion permitting plaintiffs to store construction material at time of construction in 'A' schedule. On above reasoning, it held findings of trial Court to be perverse, overturned decree and dismissed suit.

35. As noted above, plaintiffs' suit is for declaration of easementary right wherein plaintiffs claim to be dominant owner and 'A' schedule as dominant heritage with defendant as servient owner and 'B' schedule as servient heritage. Since, nature of easement pleaded by plaintiffs is that of 'necessity'.

36. High Court of Gujarat in case of **Gopalbhai Jikabhai Suvagiya's** case (supra) held that 'Easement of



Necessity' arises only where, by a transfer, bequest or partition, a single tenement is divided into two or more tenements and any of those cannot be enjoyed without certain privilege upon other such tenements. And creation of an easement of necessity is an outcome of prior relationship between tenements. Even in case of quasi necessity severance of two or more tenements formerly united into ownership of one person is required. It is held, to claim quasi easement, it must be established to be in existence at time of severance of tenements.

37. Admittedly, plaintiffs have not produced any survey sketch, village map, commissioner's report or official record to demonstrate their claim about 'A' schedule being land locked. There is neither pleading nor evidence about lands bearing Sy.no.8/27 and Sy.no.8/26 being part of common tenement. While plaintiffs claim purchase of 'A' schedule under Sale Deed dated 11.12.2014 from Puchimada K. Thimmaiah and others, defendant claims grant of Sy.no.8/26 by Deputy Commissioner, with neither party producing their respective title deeds. Consequentially, it must be held that claim of easement of necessity lacks foundational requirement.



38. Though, one of reasons assigned by first appellate Court is admission by PW.1 about existence of Balele–Kiruguru road on western side of plaintiffs’ property and unchallenged boundaries of ‘A’ schedule show house of Nanaiah on its western side and property of KEB (later CHESCOM) situated on northern side and especially when it is specific case of defendant that plaintiffs have alternative access to ‘A’ schedule through CHESCOM property. There appears to be some material about access through CHESCOM land. It is also settled law that if another way exists, however inconvenient or longer, claim of necessity fails and absolute necessity alone can sustain easement of necessity. When burden is squarely on plaintiffs to establish that except passing through suit ‘B’ schedule road and there exists no other access to reach ‘A’ schedule property, suit claim cannot sustain on mere assertion that ‘A’ schedule would become landlocked.

39. Moreover, Ex.P54 - Agreements admit of contractual user for 11 months from 02.08.2013 and 10.08.2016 respectively with Exs.P1 to P3 - letters by defendant expressing intention not to extend contract and block



access. In view of above, as easement of necessity arises by operation of law and not by contract, plaintiffs' suit would be ill-founded.

40. As regards contention that first appellate Court failed to comply with Order XLI Rule 31 of CPC, perusal of impugned judgment indicates formulation of points for determination and discussion on core issue relating to easement of necessity and availability of alternative road. Though reasoning is concise, it cannot be said that judgment is devoid of consideration of material issues. Even contention that first appellate Court failed to distinguish between prescriptive and customary easements would not further plaintiffs cause. And decisions relied on by plaintiffs are distinguishable.

41. Proposed substantial questions of law relate to appreciation of evidence - effect of admissions; evidentiary value of receipts; agreements and existence of alternative road, which are examined by first appellate Court and cannot be re-appreciated by this Court in regular second appeal.

42. In view of above, on ground that no substantial question of law as well as on ground that findings recorded by



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first appellate Court are neither contrary to statutory provisions nor based on misreading of evidence and based on sufficient reasons, it is held present case does not warrant interference.

Consequently, Appeal is ***dismissed***. No order as to costs.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

AV,GRD
List No.: 1 Sl No.: 63