CNR: KAHC010185172024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 9398 OF 2024 (GM-CPC)

BETWEEN:

1. SRI. NANJUNDEGOWDA
   S/O KEMPEGOWDA,
   AGED ABOUT 72 YEARS,

2. JAYALAKSHMAMMA
   W/O NANJUNDEGOWDA,
   AGED ABOUT 66 YEARS,

   BOTH ARE RESIDENTS OF
   BIDARAKERE VILLAGE,
   BINDIGANAVILE HOBLI,
   NAGAMANGALA TALUK,
   MANDYA DISTRICT-571401
   (SENIOR CITIZEN NOT CLAIMED)

...PETITIONERS

(BY SRI. RAJA.L., ADVOCATE)

Digitally signed by JAI JYOTHI J
Location: HIGH COURT OF KARNATAKA

AND:

1. GOWRAMMA
   W/O LATE RAMEGOWDA,
   AGED ABOUT 56 YEARS,

2. THIMMEGOWDA
   S/O LATE RAMEGOWDA,
   AGED ABOUT 42 YEARS,

3. PRAKASH
   S/O LATE RAMEGOWDA,
   AGED ABOUT 40 YEARS,

   ALL ARE R/AT

BIDARAKERE VILLAGE,
BINDIGANAVILE HOBLI,
NAGAMANGALA TALUK,
MANDYA DISTRICT-571 401.

…RESPONDENTS

(BY SRI. HAREESH KUMAR.N.T., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER PASSED BY THE ADDL. CIVIL JUDGE AND JMFC AT NAGAMANAGALA IN IA NO. IV ORDER DATED 05/04/2019, IN OS NO.188/2018 VIDE ANNEXURE-E AND ALSO SET ASIDE THE ORDER PASSED BY THE ADDL. SENIOR CIVIL JUDGE AND JMFC, NAGAMANGALA IN IA NO. 4 IN MA NO. 8/2019 DATED 04/03/2024, VIDE ANNEXURE-J.

THIS PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition has been filed seeking to challenge two orders, the first dated 05.04.2019 passed by the Addl. Civil Judge & JMFC, Nagamangala dismissing an application I.A.IV filed under Order 39 Rules 1 and 2 of the CPC (hereinafter referred to as the 'Trial Court order') as well as the order dated 04.03.2024 passed by the Addl. Senior Civil Judge & JMFC, Nagamangala in M.A.No.8/2019 (hereinafter referred to as the 'Appellate Court order') confirming the said order of the Trial Court.

2. An application I.A.No.IV was filed by the petitioner No.1/defendant No.1 seeking the relief of injunction restraining the plaintiffs from obstructing the defendants from using the road attached to their main door at I-Schedule property, which application came to be rejected both by the Trial Court as well as the Appellate Court. The challenge in the petition is to both orders.

3. Learned counsel for the petitioners submits that the petitioners are the defendants in the suit. He submits that the respondents/plaintiffs are blocking the road by putting bricks. He submits that the parties should just merely be directed to maintain *status quo* in the matter, as has been directed by this Court by its order dated 10.04.2024.

4. Learned counsel for the respondents/plaintiffs on the other hand, seeks to rely upon the Trial Court as well as the Appellate Court orders to submit that they do not suffer from any infirmity. He submits that the suit has been filed seeking easementary rights and as has been rightly pointed out by the Trial court and the Appellate

Court, the written statement itself contradicts the applications filed by the petitioners/defendants.

5. An examination of the record reflects that a suit has been filed seeking for a decree of declaration of easement rights of the plaintiffs to go to the schedule 'K' property through free way of Schedule 'I' and 'J' properties and for consequential relief of permanent injunction in respect of the schedule 'I', 'J' and 'K' properties. The prayers in the plaint and the Schedule properties are set out below:

> *"Wherefore, the plaintiffs pray that, the Hon'ble court may be pleased to pass judgment and decree in their favor and against the defendants for:*
>
> *A] For declaration of easement right of the plaintiffs to go to plaintiff's site (schedule 'K' property) through free way i.e., schedule 'I' and 'J' properties*
>
> *B] For consequential relief of permanent injunction for restraining the defendants or their agents, servants, henchmen or anybody claiming under them from not to interfere with the plaintiff's peaceful possession and enjoyment and usage of the schedule 'I', 'J' and 'K' properties as shown in the rough sketch.*
>
> *C) For recovery of Court cost and such other relief as the Hon'ble Court deems fit to grant under the circumstance of the case, in the interest of justice and equity.*
>
> *A, B, C D Schedule Property*
>
> *The old Sy.No.183/11B, total extent of 0.14 guntas of land has been alienated from agricultural purpose to*

non-agriculture vides its property bearing No.ALN 153/83-84

Bounded on:

East: Javaregowda, Amasegowda & Puttegowda's site & house
West: Land belongs to Narayanachar
North: Land belongs to Puttaswamygowda
South: Gramatana's property

'E' Schedule Property

The property measuring East-West: 23 yard, North-South 21 yards (four hundred eighty three square yards) which was purchased by the 1st defendant from the husband of the 1st plaintiff by name Ramegowda and his brother Honnegowda on 24.01.1985 bounded on,

East: House of Javaregowda
West: Vacant site of Narayanachari
North: Vacant site of Honnegowda
South: Vacant site of Honnegowda

'I' Schedule Property

The said place is belongs to plaintiffs and it is now road margin which is left by the plaintiffs to use the said road to go to their vacant site i.e., schedule 'K' property, bounded on:

East: House of Javaregowda and Amasegowda
West: 1st plaintiff's husband Ramegowda's and his Brother Honnegowda's vacant site & defendant house
North: 10 feet cement road
South: schedule 'J' (plaintiff's) property & cattle shed of Defendants

'J' Schedule Property

The said place is belongs to plaintiffs and it is now road margin which is left by the plaintiffs to use the said road to go to their vacant site i.e., schedule 'K' property, bounded on;

East: schedule 'I' (plaintiff's) property
West: Vacant site of plaintiff i.e.
'K' Schedule Property

North: Property of defendants
South: Defendant's Cattle shed

'K' Schedule Property

The vacant site of the plaintiffs measuring 0.02 guntas which is including the part and parcel of 0.14 guntas alienated land, bounded on;

East: The road left by the plaintiffs('J' schedule) and Defendant' house
West: Property of Narayanachar
North: Defendant's house
South: House belongs to Narayanachar"

[Emphasis Supplied]

6. A written statement was filed by the petitioners/defendants wherein the petitioners/defendants have set out that the respondents/plaintiffs are falsely claiming the defendants' property as 'I' schedule property in the rough sketch but there is no road towards the Eastern side of the properties. It is further stated therein that the Southern portion of the road at the entrance towards east side portion the Property has been left for the purpose of road. In addition, it is stated that there is no existence of road on 'I' and 'J' schedule properties. The relevant extract of the written statement is below:

"4) The allegations made in plaint para-3 of the plaintiffs that there is a 10 feet width cement road which is mentioned as "G" in the rough sketch has been provided

in the middle of the 0.14 guntas and that road runs from East-West and it divided the entire 0-14 guntas of property in two portion which are northern side and southern side portion of the said land is absolutely false and untenable. ***It is a fact that there is a cement road is formed by the village Grama Panchayath in the 0-14 guntas of land from East to West on the Northern side of the defendants properties.*** *The further allegation of the plaintiffs that Ramegowda and his brother Honnegowda 'were reserved some portion of property which is mentioned "H" in the rough sketch lies in between 10 feet cement road and the defendants house to use as road to the defendants to go to their house is partly correct.* ***It is a fact that the plaintiffs have reserved the Eastern portion of the property shown in "H" schedule for the ingress and aggress to the property of defendants.*** *Further these defendants are also reserved some portion of property to the Eastern side of their properties.* ***But the plaintiffs are falsely claiming the said defendants property as "I" Schedule property in the rough sketch. There is no road towards the Eastern side of the properties belongs to defendants. But these defendants are orally permitting the plaintiffs to ingress and egress on the Eastern side of the properties of the defendants to reach the Grama Tana existing towards Southern side.*** *The plaintiffs have manner of any right, title, muchless possession and enjoyment in or over the property shown as "I" schedule in the rough sketch. The further allegations in the same para that towards southern portion of the road at the entrance towards east side portion the property has been left for the purpose of road which is mention as "I" in the rough sketch which is runs from north-south up to the cattle shed of the defendants and further the said road takes right side curve and moved from eastern side to western side in between the defendants house and cattle shed which is mentioned as "J" in the rough sketch and further it takes curve towards east and runs upto the western side of vacant site of plaintiffs which is situated in the southern corner to the entire 0-14 guntas of land and the said vacant site is measuring 2 guntas as mentioned "K" in the rough sketch are all absolutely created and concocted false story of the plaintiff to make a wrong full gain only.* ***The further allegations of the plaintiffs that particular way / space left for the***

purpose of egress and ingress at the eastern edge and the way which was run from east-west after taking curve towards southern direction is abutting to cattle shed of the defendants towards its northern side and also abutting to schedule vacant site are all totally false and untenable. There is no any road was or is existing in the entire 0-14 guntas of land which is shown as "I" and "J" in the rough sketch. *The plaintiffs have drawn the enclosed rough sketch according to their whims and fancy.* ***As such these defendants does not admit the existence of "I" and "J" portion of lands shown in the alleged rough sketch. The plaintiffs have no manner of any right, title, possession and enjoyment in or over the "I" and "J" portion of lands which is purchased properties of these defendants.*** *As such plaintiffs are put to strict proof of the said allegations.*

xxx xxx xxx

7) The allegations made in plaint para-6 of the plaint that the defendants have no right to create any obstruction to their esamantory road in which the plaintiffs are enjoying from last 33 years and further they have requested the defendants on several occasions not to put any green fence on the said way but the defendants have refused their request and during the last week of July -2018 give unnecessary trouble to the plaintiffs by obstructing their right of way for better enjoyment of their "K" schedule property are all absolutely false claims and untenable. ***As afore said when there is no existence of such road "I" and "J" schedule in 0-14 guntas of land, they have no easemantory rights of enjoyment of the same from last 33 years."***

[Emphasis Supplied]

7. An examination of the application I.A.No.IV also reflects that the petitioners/defendants have taken a slightly different stand in their application as can be seen

from the relevant extract of the application and affidavit, which is set out below:

> *"APPLICATION UNDER ORDER 39 RULE 1 & 2 R/w Sec.151 of C.P.C.*
>
> *For the reasons set out in the accompanying affidavit, the Defendants/Applicants prays that this Hon'ble Court may be pleased* ***to restrain the plaintiffs, their agents, servants and anybody claiming under them from obstructing the defendants for using the road attached to their main door at 'I' schedule road property shown in the rough sketch attached to the plaint, in any manner, by removing the stone boulders poured by plaintiffs, till disposal of the above suit, as the same is quite essential in the interest of justice and equity...."***
>
> ***"AFFIDAVIT***
>
> *xxx xxx xxx*
>
> *4. I submits that, as stated in our written statement, I had purchased a site property jointly from one Ramegowda, (the husband of plaintiff-1 and father of plaintiffs-2 & 3 and his brother Honnegowda sons of late Melegowda @ Karigowda of Bidarakere village for valuable consideration under a Registered sale deed dated 24/1/1985. The said property is measuring East-West:- 23 yards and North-South:- 21 yards bounded by East: House property of Javaregowda, West: site of Narayanachari, North and South site of Honnegowda. Attached to this property to the Eastern side the 2nd defendant has purchased a site property jointly from Honnegowda son of late Melegowda @ Karigowda of Bidarakere village for valuable consideration under a Registered sale deed dated 20-2-1998. The said property is measuring East-West:- 34 feet, and North-South:- 44 feet, bounded by East: Road alla site property _ of Amasegowda,, West: site of Ramegowda, North: site property of Nanjundegowda and South: Gramathana property. Both these properties are got alienation from their vendors and included in the Bidarakere gramathan.*

By virtue of our right, title, possession and enjoyment of the above properties we the defendants became absolute owners and we are in possession and enjoyment in the above said properties without any interruption till to-day. ***I have built a residential house in my property by obtaining a valid license from the Grama Panchayath on 6-10-1988 and defendant-2 has built a cattle shed in her property to the daring our cattles Ramegowda and Honnegowda have left a road margin which is shown in Towards the Eastern side of our both the properties our vendors namely "I" schedule of the plain sketch, in between the house of Javaregowda and our properties for the better enjoyment of the site properties sold to us.*** *From 1985 we the defendants are making use of the above said road schedule property for ingress and agress to our residence and to the cattle shed. The main door of our residential house is existing towards the road "I" schedule property.* ***The plaintiffs have clearly and validly admitted the "I" schedule road margin in their plaint and also the rough sketch furnished along with the plaint. Except the above "I" schedule road, we the defendants have no other alternative road to reach our residence and cattle shed.***

5. I further submits that, the plaintiff has filed the above suit against us with a ulterior motive to get a road margin in between the properties of defendants-1 & 2. All the efforts in the locality done by the plaintiffs have failed and as such, they have filed the above suit against us seeking the relief of declaration of a road in between our properties under easementary rights. As afore said, we the defendants are living peacefully from 1985 till today by enjoying our respective properties without any interruption. ***But, now the plaintiffs are making a demand of leaving a road in between our properties as per "J" of schedule marked in the rough sketch, leads us to struggle, and in case of any road is formed in between our properties the very purpose of purchasing of our properties will be defeated*** *and the value of our properties will be decreased against to our will and wish.*

6. I further submits that, the plaintiffs even after filing of the above suit, are making one or the other

pinpricks to us by one or the other way. In fact, last week the plaintiffs have forcefully blocked our main door by pouring 8-10 loads of stone boulders illegally on the "I" road property which was using by us to ingress and egress our residential house. This act of the plaintiffs is a public nuisance and illegally force us from not to use or enjoy our properties purchased by us. The very illegal act of the plaintiffs is to force us to mend according to their will and wish and to allow them to form an illegal road in between our properties as demanded by them in "J" of the schedule sketch. ***By the illegal act of the plaintiffs we the defendants are forcefully restraining to making use the road margin situated to eastern side of our main door of the residential house. Hence, it is just and necessary to restrain the plaintiffs from blocking the "P" schedule road margin from our better enjoyment of our properties."***

[Emphasis Supplied]

8. This is also pointed out in the Objections filed to the application, the relevant portion of which reads thus:

"4. The plaintiff No.2 respectfully submits that, the plaintiffs have filed the suit for declaration and mandatory injunction and also another relief of claiming the easementary right in respect of the suit schedule properties.

5. The plaintiff No.2 respectfully submits that, the very application filed by the defendant No.1 i.e., under Order XXXIX Rule 1 and 2 is not absolutely maintainable for the reasons that, the order of the said provision is clearly shows that, "the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property". ***In that circumstances, the defendant No.1 should not seeking the relief as per his application that "restrain the plaintiffs, their agents, servants or anybody claiming under them from obstructing the defendants for using the road attached to their main door at "1" schedule road***

> ***property shown in the rough sketch attached to the plaint, in any manner, by removing the stone boulders poured by plaintiffs.***
>
> *6.* ***The plaintiff No.2 respectfully submits that, the defendant No.1 is himself admitted in his very application that 'by removing the stone boulders poured by plaintiffs in the suit "I" schedule property as shown in the rough sketch',*** *hence, the defendants have approached this Hon'ble Court by filing a fresh suit for mandatory injunction by paying the proper Court fee only. But, he should not seeking for the same relief through that application.*
>
> [Emphasis Supplied]

9. The learned trial Court after examining the pleadings, has held that the suit of the respondents/plaintiffs is for declaration of easement rights and permanent injunction to restrain petitioners/defendants from using Schedule 'I', 'J' and 'K' properties. The prayer in I.A.IV is seeking to restrain the respondents/plaintiffs from obstructing the petitioners/defendants from using the road attached to their main door at I-Schedule property. However, the petitioners/defendants have in their written statement denied the existence of such road. The learned Appellate Court has also pointed out that the defence taken by the petitioners/defendants is completely contrary to its

pleadings in the application. Thus, it is held that whether or not the road is in existence or not, a right of easement of necessity will only come out after a full-fledged trial. The relevant extract of the Impugned Order is set out below:

> *"14. In this case the plaintiff claiming that "I" and "J" road for access his property "K" shown in the rough sketch. As per the plaint averments plaintiffs are specifically stated about the existence of the "I" and "J" road.* ***The defendants filed their written statement and specifically denied the plaint averments as well as rough sketch of the plaintiffs. At the same time the defendants did not produced any rough sketch about to show the present existence of the properties.*** *The defendants are denied whole plaint averments and also denied the existence of the "I" and "I" road but admitted the existence of the "G" road shown in the rough sketch. For better understanding I extract the written statement averments in para No.8 last 6th line as follows:*
>
> > ***"But there is no "I" and "J" road existing in the schedule properties as shown in the rough sketch. The plaintiff with ulterior motive and also to knock of the valuable properties falsely claiming that there is road in "I" and "J" property. Further in last 3 lines stating that the claim of the plaintiff as a road shown in "I" and "J" schedule properties mentioned in the rough sketch is illegal and no merits. As such the plaintiff have not entitled for any relief sought by them".***
>
> ***15. This specific defense took by the defendants and completely denying of the existence of "I" and "J" road in the rough sketch. But the defendants themselves sought for the injunction in respect of the "I" road mentioned in the rough sketch filed by the plaintiffs.*** *When the defendant denied the existence*

of the road he cannot having any right sought for the injunction which was denied by himself. The I.A. No.IV filed by the defendants is contrary to his pleadings and defense took in the written statement. Law is not permissible to sought a relief contrary to their own pleadings. Unfortunately the defendants denied the existence of the "I" and "J" road in the written statement but claiming injunction against to the plaintiffs on relying the same rough sketch produced by the plaintiffs which was denied by the defendants in the written statement. The defendants did not approached this court as well as trial court with clean hand.

16. In this case, ***whether road is existence or not and there is right of easement of necessity come out after full pledged of trial. In this stage the defendants sought for the relief is contrary to their own pleadings is not acceptable. The learned trial court rightly observing the available material on record on prima-facie and arrive the conclusion and dismissed the I.A. No.IV, there is no interference arise.*** *Hence, I answer point No.1 in the Negative."*

[Emphasis Supplied]

10. Given the discussions aforegoing and the pleadings of the petitioners/defendants, this Court agrees with the opinion expressed in the Impugned Order that existence of road can be ascertained only after a trial is conducted in the matter. The petition is accordingly ***dismissed.*** All pending applications stand closed.

11. The petitioners/defendants are however at liberty to take appropriate steps, in accordance with law, for redressal of their grievance before the Trial Court.

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

KS
List No.: 1 Sl No.: 46