

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C., AT BELTHANGADY.

Present: SRI. B.K NAGESHMURTHY, B.A. L.L.M.,
Prl. Senior Civil Judge and J.M.F.C.,

Dated: THIS THE 29th DAY OF AUGUST 2019

R.A. No. 1/2018

Between:

Appellant: Mr. Keshavarama.S.**Defendant No.1 in Trial Court**

Aged 54 years,
S/o. Subraya Bhat,
R/at Sarpangala Farma,
Hudkeri, Hathyadka village,
Arasinamakki post,
Belthangady Taluk, D.K.

(By Sri.A.S.K Advocate)

-Vs-

Respondents: 1. Mr. Sudhama Hebbara @

Sudhama Gokhale.

Aged 65 years,**Plaintiffs in Trial Court**

S/o. Seetharama Hebbar,

2. Mr. Vinayaka Hebbar,

Aged about 72 years,

S/o. Seetharama Hebbar,

3. Mr.Chandrashekar Ghore,
Aged about 56 years,
S/o. Subraya Bhat Ghore,

4. Mr.Jagadeesha Khare,
Aged about 50 years,
S/o. Vaidhehi khare,

5. Mr.Ramesh Hebbar,
Aged about 73 years,
S/o. Anantha Gogate,

6. Mr.Ganesh Gogate,
Aged about 47 years,
S/o. Anantha Gogate,

7. Mr.Srikrishna Bhat.. **D2 in the trial court**
Aged about 64 years,
S/o. V.Keshava Bhat

8. Mrs. Kamala,**D3 in the trial court**
Aged about 60 years,
W/o. Venkataramana Bhat.

9. Mrs. Gayathri,**D4 in the trial court**
Aged about 46 years,
W/o. Madhava Bhat,

10. Mr.K.Narayana,**D5 in the trial court**

Aged about 80 years,
S/o. Koraga Sherigar,

11. Mr.Sudhir Khare,**D6 in the trial court**
Aged about 56 years,
S/o. Late Ramanatha Khare,

12. Mr.N.Mahadeva Hebbar
Aged about 69 years,**D7 in the trial court**
S/o. Anantha Hebbar.

13. Mr.K.Mahammed Beary
Aged about 78 years,**D8 in the trial court**
S/o. Moidin Beary.

14. Mr.Lakshmana Gogate
Aged about 74 years,**D9 in the trial court**
S/o. Krishna Gogate,

15. Mr.Chandayya Shetty,
Aged about 68 years,**D10 in the trial court**
S/o. Somappa Shetty

16. Sesappa Shetty**D11 in the trial court**
Aged about 66 years,
S/o. Somappa Shetty

17. Mr.Thimmappa Shetty
Aged about 74 years,**D12 in the trial court**

S/o. Somappa Shetty

18. Mrs.Sumathi Shetty

Aged about 48 years,**D13 in the trial court**

W/o. Late Purandara Shetty

19. Mr.Mohan Shetty,

Aged about 48 years,**D14 in the trial court**

S/o. Thukrappa Rai.

20. Mr.Balakrishna Shetty

Aged about 64 years,**D15 in the trial court**

S/o. Thukrappa Shetty

All are R/at Nekkaradka valya,

Hathyadka village,

Arasinamakki post,

Belthangady Taluk,D.K.

(R1, R2, R4 to R6 -By Sri. Y.S.B advocate,
R7,R11, R12, R13, R14, R16 to R20 - By
Sri.D.S.K advocate, R3, R5, R8 – Absent.)

Date and nature of appeal: Appeal against the Judgment
and Decree dated 11-10-2017
Passed in O.S 184/2010 on the file
of Additional Civil Judge & JMFC.,
Belthangady.

Date of institution : 02-01-2018

Date of Judgment : 29-08-2019

Total Duration : Year/s Month/s Day/s

01 07 27

(B.K.NAGESHMURTHY)
Prl. Senior Civil Judge & J.M.F.C.,
Belthangady,D.K

JUDGMENT

This is an Appeal filed under Section 96 and under Order 41 Rule 1 and 2 C.P.C against the Judgment and Decree passed in O.S.184/2010 dated 11-10-2017 on the file of Additional Civil Judge & JMFC., Belthangady.

2. For the sake of convenience the ranks of the parties are referred to as per their ranks in the trial court.

3. The Appellant was the Defendant No.1 and the Respondent No.1 to 6 were the plaintiffs and the Respondents No.7 to 20 are the defendants No.2 to 14 before the lower court.

4. The brief facts of the case leading to filing of this appeal are as follows:

That the plaintiffs No.1 to 6 contended that in Nekkiladka locality the people are irrigating their agricultural properties by constructing a katta every year to Shishila river running over sy.no.249 of Hathyadka village in a place called Kudpulgundi and for the construction of the same they were using mud, stone wood etc and then deviate water of the katta to their properties. Except the said Katta there is no source of irrigation for

them. For construction of katta every year for its maintenance there was pathway/roadway is in existence over Government land bearing sy.no.84/2 measuring 8 acres at Hathyadka village, Belthangady Taluk and the mud road running over the portion of the B schedule property from Kuntalpalke – Arasinamakki road till the place of katta and they were using the said road to transport material to construct the katta every year which is the road in B schedule property which is running over the schedule A property having width of about 15 feet. The 1st defendant/appellant is having no manner of right to obstruct the use of B schedule roadway. On 11-07-2010 at about 10-00a.m when the plaintiffs were going through the said B schedule road to the place of katta the 1st defendant obstructed the use of said road, then they lodged complaint before the Uppinangady police station and subsequently the above suit was filed.

5. On the other hand the 1st defendant/appellant by filing written statement denied the entire case of the plaintiffs and contended that the plaintiffs are trying to get some declaratory reliefs in the guise of getting prohibitory

injunction and they are claiming some rights over the Government lands. They should have filed the suit in representative character for which some mandatory provisions are to be complied and there is a pathway outside the plaint A schedule properties and the plaintiffs who are the residents of locality having some ill will against the 1st defendant who is the new comer in the locality. Their intention is to threatening and thereby to get some rights over the properties belonging to him. They are trying to take advantage of pathway running outside the plaint A schedule property by claiming the same to be running through plaint A schedule properties. Thus they are not entitled for injunction.

6 Based on the above pleadings the following issues were framed by the lower court.

ISSUES

- 1) Whether the plaintiffs prove that B schedule road was running over the A schedule property as on the date of suit?
- 2) Whether the plaintiffs prove that they are using the B schedule road for transporting

materials for constructing Katta to channel running in sy.no.84/1 of Hathyadka village?

- 3) Whether the plaintiffs prove that defendant No.1 was obstructing to the B schedule road by putting fence around the A schedule property and to close the B schedule road?
- 4) Whether the defendant No.1 proves that suit is not maintainable?
- 5) Whether the plaintiffs are entitle for the relief sought in the suit?
- 6) What order or decree?

7. In support of the case of plaintiff the plaintiffs No.1 and 2 examined as PW1 and PW2 and got marked documents at Ex.P1 to Ex.P24. The 1st defendant examined himself as DW1 and got marked documents at Ex.D1 to Ex.D9. The 2nd defendant was examined as DW2.

8. After hearing the arguments, the lower court has decreed the suit of the plaintiffs and granted permanent injunction order against the 1st defendant.

9. Aggrieved by the said judgment and decree, the present appeal has been filed on the following grounds:

That the judgment and decree is arbitrary, unjust liable to be set aside and lower court given wrong findings with regard to the issues and lower court did not consider the exhibits properly and has come to wrong conclusion with regard to evidentiary value of those documents and the lower court has failed to frame proper issues and failed to take notice of admissions made by the respondents, miserably failed to appreciate evidence and arguments. Thus prayed to set aside the impugned judgment and decree in O.S.184/2010 and pass such order and further reliefs deems fit to grant under the circumstances of the case.

10. In response to service of notice issued by this court the respondent No.1, 2, 4 to 6, 7, 11, 12, 13, 14, 16 to 20 appeared before the court, but not filed any cross objections. The Respondents No.3, 5, 8 not appeared before the court and they remained absent.

11. After receipt of L.C.R, heard the arguments of counsel for appellant and counsel for Respondents.

12. Perused the records.

13. From the materials placed before the court following points arise for my consideration;

- 1) Whether the Judgment of the trial court calls for interference?
- 2) What order or decree?

14. After the close scrutiny of the entire LCR and oral and documentary evidence and after hearing the arguments, my findings to the above points are as follows:-

Point No.1 : In the Negative

Point No.2 : As per the final Order for the following:

REASONS

15. **POINT NO.1:** It is the specific case of the plaintiffs that they being the villagers of Nekkiradka valya Hathyadka village are irrigating their agricultural lands by putting up katta to the Shishila river running in syn.o.249 of Hathyadka village in a place called Kalpuligundi . To the said Katta water will flow through channel through the property bearing sy.no.84/1 belongs to the appellant/1st defendant and right to use the said water channel was reserved while passing grant order D.R 710/1970 dated

20-10-1961. To go to katta to construct and maintain there was a road/pathway of B schedule property existing on Government land in sy.no.84/2 of Hathyadka village more fully described in A schedule property. The defendant No.1 is the resident of said locality in sy.no.84/1 adjacent to A schedule property who encroached Government A schedule portion subsequent to purchase of his property and started to interfere to use of the B schedule roadway by the plaintiffs. The act of the defendant No.1 was objected by the plaintiffs before the revenue authorities. The Revenue Inspector has executed the Order in IRR:CR 17/09-10 dated 01-06-2010 to evict the obstruction, but the 1st defendant continued his obstruction, then the plaintiffs lodged complaint to the Uppinangady police station and no action was taken by the police against the 1st defendant and the police have orally directed the plaintiffs to approach the court. Thus the suit was came to be filed by the plaintiffs for the relief of Permanent Injunction.

16. The 1st defendant/appellant taken up the defence that the plaintiffs are trying to get some declaratory relief in the guise of getting prohibitory injunction and they

claimed some rights over the Government lands and they are claiming rights as the members of general public. In such a case they would have filed the suit in representative character. But the plaintiffs have not opted for doing so. Thus the suit is not maintainable and liable to be dismissed. Further they contended that the plaintiffs are the residents of locality are having some ill will against the appellant who is a new comer to the locality. Their intention is to threaten him and thereby to get some rights over the property absolutely belonging to him. They are trying to take advantage of pathway running outside the plot A schedule properties by claiming the same to be running through the plot A schedule properties. As such they are not entitled for equitable relief of injunction.

17. The plaintiffs in support of their case relied on the RTC marked at Ex.P7 pertaining to sy.no.84/2 measuring 8 acres pertaining to the A schedule property belongs to Government and to establish the road relied on Ex.P9 which is the joint inspection report by the Tahsildhar dated 26-09-1989 reflects the existence of road to katta and

flowing of water to their lands from the said katta. It is prepared while discharging his duties as public servant and as per Section 35 of Evidence Act it is relevant fact and Ex.P9 to be believed. Ex.P10 is the proceedings against the defendant No.1 with respect to removal of obstruction caused by the appellant/1st defendant with relating to disputed road/pathway. Ex.P11 is the mahazar prepared by Revenue Inspector pertaining to removal of obstruction to the road in sy.no.84/2 in property measuring 8 acres reflects that the defendant No. put up fence and caused obstruction. Ex.P12 is the report by the Revenue Inspector with relating to disputed road and Ex.P13 is the sketch prepared by the Surveyor reflects the disputed road running on property in sy.no.84/2 as claimed by the plaintiffs. Ex.P14 is the copy of complaint given to the police with relating to causing obstruction by the appellant. Ex.P15 is the endorsement issued by the police. Ex.P19 is the statement given by the appellant/1st defendant admitting the existence of katta and public road leading to the river. Ex.P20 and Ex.P21 are the mahazar and reports prepared by the Revenue Inspector reflects the

voluntary removal of obstruction by the appellant/1st defendant. Ex.P22 is a report submitted by the Tahsildhar to the Deputy Commissioner, D.K regarding removal of obstruction to the public way by the 1st defendant/appellant voluntarily. Ex.P12 to 22 are the public documents prepared by the Revenue Inspector, surveyor and Tahsildhar who are the public servants in discharge of public duties. The said documents are prepared and same are relevant as per Section 35 of Indian Evidence Act and there is nothing on record to disbelieve those documents.

18. On the other hand, the defendant relied on Ex.D2 issued by Executive Engineer , Small Irrigation Division, Mangalore stating that no license is given to Hathyadka sy.no.249/1A, 84/2A, 83/2A near a place called Hudkeri to lift the water from the river. The said document is dated 01-09-2010. But Ex.P19 is the statement given by the 1st defendant/appellant himself by admitting the existence of Katta and alleged road and undertaken to remove the obstruction. When such being the case it is not possible to disbelieve the fact of existence of katta and the alleged road

running over the A schedule property and B schedule road. Further before the Revenue authorities the appellant has undertaken to remove the obstruction caused to the B schedule road. Thus in view of the said admission before the revenue authorities and as there is nothing on record to disbelieve the documents at Ex.P12 to Ex.P22 the plaintiffs have successfully proved the existence of alleged road and interference caused by the defendant No.1. The 1st defendant taken up another contention that the suit of the plaintiff is not maintainable as it is not filed in representative character. As per Ex.P12 to Ex.P22 reflects the existence of katta and using of river water by putting up katta by the plaintiffs and existence of road in the Government property in sy.no.84/2 of Hathyadka village and then lodging of complaint by the plaintiffs. When such being the case though the plaintiffs have common interest it is not necessary for the plaintiffs to file any representative character suit as contended by the defendant as he has made admissions regarding the alleged interference and existence of katta and road as claimed by the plaintiffs. Hence, I hold that the plaintiffs

are entitled for the relief of permanent injunction as prayed in the suit. Thus I hold that the judgment and decree of trial court does not call for interference. Hence, I answer above point No.1 in the Negative.

19. POINT NO.2: In the result, I proceed to pass the following –

ORDER

Appeal filed by the appellant is hereby dismissed with costs.

Consequently the judgment and decree dated 11-10-2017 passed in O.S. No.184/2010 on the file of Additional Civil Judge & JMFC., Belthangady is hereby confirmed.

Draw decree accordingly.

Office is directed to send back the records to the lower court along with the copy of this Judgment forthwith.

(Dictated to the stenographer, transcribed by her, corrected, signed by me and then pronounced in the open court on this 29th day of August 2019)

(B.K.NAGESHMURTHY)
Prl. Senior Civil Judge & J.M.F.C.,
Belthangady,D.K.

us