

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS ON THE 27 TH DAY OF June 2002

BEFORE

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

CRP No 151 OF 2002

BETWEEN

1 SHIVASHARANAPPA
S/O SHIVAMURTHEPPA YANKANCHI
AGE MAJOR
OCC AGRIL
R/O ARALGUNDAGI
TQ - JEWARGI
DIST - GULBARGA

... PETITIONER

(By Sri. Basavaraj Kareddy - Adv.)

AND :

1 MAHANTAPPA
S/O MALRAJAPPA
MAJOR
OCC-AGRIL
R/O ARALGUNDGI
TQ-JEWARGI
DIST-GULBARGA

2 REVANSIDDAPPA
S/O MALJAJAPPA
MAJOR
OCC-AGRIL
R/O ARALGUNDGI
TQ-JEWARGI
DIET-GULBARGA

3 SHARANAPPA
S/O MALKAJAPPA
MAJOR
OCC-AGRIL
R/O ARALGUNDGI
TQ-JEWARGI
DIST-GULBARGA

4 RAVINDRA
S/O MALKAJAPPA
MAJOR

OCC-AGRIL
R/O ARALGUNDGI
TQ-JEWARGI
DIST-GULBARGA

5 BASAPPA
S/O MALKAJAPPA
MAJOR
OCC-AGRIL
R/O ARALGUNDGI
TQ-JEWARGI
DIST-GULBARGA

... RESPONDENTS

(By Sri: VEERESH B PATIL FOR R1-5)

THIS CRP FILED U/S.115 CPC AGAINST THE ORDER DATED 3.11.2001 PASSED IN M.A.NO.28/2001 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN.), GULBARGA, ALLOWING THE MISC. APPEAL AND SETTING ASIDE THE ORDER DATED 14.2.2001 PASSED ON IA NO.I & II IN O.S.NO9.3/2001 ON THE FILE OF THE CIVIL JUDGE (JR.DN.), JEWARGI, ALLOWING IA NO.I FILED U/O 39 R 1 & 2 CPC FOR TI AND DISMISSING IA NO.II FILED U/O 39 R 4 CPC TO VACATE THE TEMPORARY INJUNCTION GRANTED.

This petition coming on for hearing this day, the court made the following:

ORDER

The revision filed against the order passed by the Principal Civil Judge(Sr.Dn.) Gulburga in M.A.No.28/2001. The petitioner is the plaintiff filed the suit against the respondents/defendants restraining them from passing through their lands bearing sy.No.380 and 381. According to the plaintiff's case, sy.No.381

which is phoded as 381/A and 381/B situate to the northern side of the UKP Canal. Sy.No.380 adjoins sy.NO.381 on the western side. The land of the defendants bearing sy.NO.385 adjoins sy.No.380 on its western side. In otherwords, in between sy.No.381 and 385, the land bearing sy.No.380 situated. It is the contention of the plaintiffs that the defendants are illegally passing through their land to reach sy.No.385 and causing acts of nuisance. Hence prayed for grant of injunction.

It is also the contention of the plaintiff that there is a cart track in existence in the land bearing sy.No.382,383 and 384 which reaches towards Nagavi village and the said cart track is the legitimate access for sy.No.385 and also contends that after the formation of a canal there is an access on the service road of the canal to reach sy.No.385. Therefore, contends that the defendants have no right to pass on the boundary of sy.No.381 to ^{reach} ~~lead~~ sy.No.385. On the contrary, the defendants contend that they have been using the disputed cart track for over several years and they have perfected their easementary rights by prescription and it is said that the existence of the alternative ways contended by the plaintiff

has no relevance to the claim of easementary right of the defendants ~~easementary right of way~~ by way of prescription. The trial court granted injunction against the defendants. In appeal the Civil Judge(Sr.Dn.) set aside the order and dismissed the interlocutory application of the plaintiff for grant of injunction. There upon the present revision is filed.

It appears that during the course of hearing of this petition, the defendants were permitted to peacefully pass through the disputed area in the lands as an access to their land for bonafide cultivation activities. Now by virtue of the order in the miscellaneous appeal, there is no impediment for the defendants to pass through the disputed way.

After hearing the parties, I find that the disputed contentions raised are essentially a question of fact. The existence of public or cart ways or path ways with reference to the land records may not be of much help for appreciating the crux of the issue in the suit. The defendants claim easmentary right by way of prescription to



pass through the land on the northern boundary of the land bearing sy.No.381 and 380, which is stoutly denied by the plaintiff. To resolve the dispute, it is necessary that oral evidence is very essential. During the pendency of the proceedings, the defendants were permitted to use the disputed way for bonafide purpose. If the same is continued for some more time, I do not think that the plaintiffs ^{LSOVI'S} ~~suit~~ suffers any irreversible damage.

The counsel for the petitioner apprehends that on account of the movement of cart, the crop may be damaged. However, this may be taken care of by directing the respondent not to damage the crop and should cautiously make use of the way in a bonafide manner. In view of the fact that no irreversible hardship is caused to the plaintiff, I think the ~~grant~~ ^{of} injunction against the respondents as prayed for by the plaintiff cannot be granted. Accordingly, I do not find any merit in the petition. However, it is directed that the trial court shall dispose of the suit within three months from the date of this order. It is however, directed that the parties can peacefully negotiate for a settlement if possible. The

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plaintiffs can agree for providing a passage by way of cart track on the western boundary providing the passage running from south to north from the canal point.

The counsel for the respondent submit that if that passage is granted ^{as the Respondent} he would give up his claim of right of way in the disputed way. Therefore, the parties are directed to work out the remedies by way of compromise at the earliest and if not possible, the suit has to be concluded within three months as directed.

Sd/-
Judge