

KABG500000522022



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE,
GOKAK.**

Present: **G. DEEPA, B.A.L., LL.B.,**
Prl. Senior Civil Judge.,
Gokak.

Dated, this the 26th day of April, 2024

O.S.NO.72/2022

- Plaintiffs:
1. Smt.Mahadevi Lakkappa Karigar
Aged about 45 years, Occ: Hose hold,
R/at Alakanur, Raibag Tq.
 2. Smt.Laxmi Mahaning Pujeri
Aged about 34 years, Occ:Household,
R/at Sindhikurbet, Gokak Tq.

(By Sri.L.M.S, Advocate)

V/s

- Defendants:
1. Sri.Vittal Siddappa Kuri @ Shiraguri
Aged about 47 years, Occ:Agriculturist,
R/at Sangankeri, Gokak Tq.
 2. Sri. Rajkumar Siddappa Kuri @ Shiraguri
Aged about 37 years, Occ: Agriculturist,
R/at Sangankeri, Gokak Tq.

3. Smt.Lakkawwa Hanamant Kadakol
Aged about 60 years, Occ:Household
R/at Sangankeri, Gokak Tq.
4. Smt.Basavva Ramappa Kolavi
Aged about 40 years,
Occ: Household,
R/at Sangankeri, Gokak Tq.
5. Smt. Sattewwa Yallappa Kolavi
Aged about 35 years,
Occ: Household
R/at Sangankeri, Gokak Tq.
6. Smt.Ratnamala Ashok Huded
Aged about 50 years,
Occ: Agriculturist,
R/at Sangankeri, Gokak Tq.
7. Smt.Savakka Shivabasu Maladdavar
Aged about 67 years,
Occ: Business,
R/at Awatigalli Gokak, Gokak Tq.
8. Smt.Sulochana Yallappa Bhovi
Aged about 45 years,
Occ: Agriculturist,
R/at Nallanatti, Gokak Tq.
9. Smt.Akkavva Vittal Wagaral
Aged about 40 years, Occ:Household,
R/at Sindhikurbet, Gokak Tq.

10. Smt. Bharati Yallappa Hasibisi
Aged about 38 years, Occ: Household,
R/at Sindhikurbet, Gokak Tq.
11. Sri.Krishnaji Mahadev Kalal
Aged about 28 years, Occ:Household
R/at Sindhikurbet, Gokak Tq.
12. Smt.Rajiya Rajesab Pathan
Aged about 50 years, Occ: Household,
R/at Sindhikurbet, Gokak Tq.
13. Smt.Parvin Maliksab Ladhkhan
Aged about 50 years, Occ: Household
R/at Sindhikurbet, Gokak Tq.
14. Smt.Laxmi Mahadev Patil
Aged about 40 years, Occ:Household,
R/at Sindhikurbet, Gokak Tq.
15. Smt.Mala Anand Madar
Aged about 50 years, Occ:Household,
R/at Sindhikurbet, Gokak Tq.
16. Sri.Srikant Basavanni Kurabet
Aged about 37 years, Occ: Private Work,
R/at Sindhikurbet, Gokak Tq.
17. Smt.Basavva Yallappa Banavi
Aged about 47 years, Occ: Household,
R/at Sindhikurbet, Gokak Tq.

18. Sri. Basavaraj Revappa Patayat
Aged about 35 years, Occ: Household
R/at Sindhikurbet, Gokak Tq.
19. Smt.Shettewwa Parasappa Bandiwaddar
Aged about 35 years, Occ: Household,
R/at Sindhikurbet, Gokak Tq.
20. Sri.Chandrashekhar Krishna Jamakhandi
Aged about 55 years, Occ: Business,
R/at Sindhikurbet, Gokak Tq.
21. Sri.Bharat Krishna Jamakhandi
Aged about 40 years, Occ: Business,
R/at Sindhikurbet, Gokak Tq.
22. Smt.Savitri Virupaxayya Hiremath
Aged about 50 years, Occ:Household,
R/at Sindhikurbet, Gokak Tq.
23. Smt.Laxmi Anand Malladadavar
Aged about 43 years, Occ: Household,
R/at Sindhikurbet, Gokak Tq.
24. Smt.Akkavva Yallappa Wagaral
Aged about 45 years, Occ:Household
R/at Sindhikurbet, Gokak Tq.
25. Smt.Saviri Shivabasu Malladadavar
Aged about 50 years, Occ: Household,

R/at Sindhikurbet, Gokak Tq.

26. Smt.Shashikala Basavaraj Malladadavar
Aged about 47 years, Occ: Household
R/at Sindhikurbet, Gokak Tq.
27. PDO-Gram Panchayat, Shindhikurbet
28. Smt.Sattewwa Siddappa Kuri @ Shiraguri
Aged about 67 years, Occ:Agriculturist,
R/at Sangankeri, Gokak Tq.

(D-1, 13, 20, 21, 23, 26, 27-Exparte)
(D-2 & 28 by Sri.S.G.T Advocate)
(D-3, 4, 6, 9 to 12, 14 to 19 22, 24 & 25
by Sri.B.K.J. Advocate)
(D-27 By L.A.G.P)

PARTIES TO I.A.No.8 U/O 39 RULE 1 AND 2 OF CPC

- Applicants: 1 Sri. Rajkumar Siddappa
 Kuri @ Shiraguri
 Defendant-2.
- 2 Smt.Sattewwa Siddappa
 Kuri @ Shiraguri
 Defendant-28.

V/s.

Respondents: PDO-Gram Panchayat,
Shindhikurbet

Defendant No.27.

**ORDERS ON I.A.No.8, FILED U/O 39 RULE 1 & 2 OF
CPC**

The advocate for defendant No.2 & 28 has filed the above application and sought for an order of injunction, restraining the defendant No.27 from providing water connections to the defendant Nos.3 to 36 till the disposal of the suit on the grounds that the plaintiffs have filed the above suit against these defendants and other defendants for the reliefs of partition and separate possession in respect of the agricultural landed properties, which are standing in the name of this defendant No.2. The defendant Nos.3 to 26 have no right & interest over the suit schedule properties. The defendant No.27 has no authority to issue property extract by receiving tax on it. Whereas, the defendant Nos.3 to 26 in collusion with the officials of the defendant No.27 has created bogus property extracts in the names of defendant Nos.3 to 26. Whereas, during the pendency of the suit, inspite of the knowledge of the defendant No.27 that the suit is pending, is illegally providing water connections to the defendant Nos.3

to 26, who have illegally encroached the suit schedule land by digging the suit land and install the pipelines. Accordingly, on 06/11/2023, the defendant No.27, his staff, other members of the Panchayath, these defendants.3 to 26 and their relatives came to the suit schedule properties with deadly weapons and JCB bearing No.KA.49/M-9711 to dig the land and to install the pipeline in the suit schedule property. Though the defendants.2 & 28 have requested them, not to take illegal work, the defendant No.27 did not stop his illegal acts and even not heeded to the request of the defendant Nos.2 & 28. The defendant No.27 has no authority to give water connections. Hence, the defendant No.2 and 28 have approached the police, who have stopped the illegal work of the defendant No.27.

2. The defendant No.27 having no authority, no rights to provide water connections by digging the land of others. Hence, the defendant Nos.2 & 28 have prima facie case, balance of convenience in their favour. Hence, if the application is not allowed, much hardship will be caused to the defendant Nos.2 & 28 and same cannot be compensated in terms of money. On the other hand, if the application is

allowed, no hardship will be caused to the defendant No.27. Accordingly, sought for allowing the application.

3. On the other hand, the defendant No.27 has filed objections by denying the averments of the petition in its entirety and contended that the present suit is filed by the plaintiffs against the defendants for the reliefs of partition and separate possession. This defendant No.27 is having authority to provide new water connections on the applications of the villagers. But, the defendant Nos.2 & 28 have personal grudge against the defendant Nos.3 to 26 as there is a dispute between themselves in respect of the family property. Hence, the defendant Nos.2 & 28 have intentionally filed the instant applications just to cause loss to the defendant Nos.3 & 26 and this defendant No.27. The defendant No.27 has not done any illegal act. The defendant Nos.2 & 28 have made false allegations and they have not shown any sufficient grounds. The defendant No.27 being the PDO of Gram Panchayath, Shindikurabet is a public servant having authority to supply the water. Whereas, the defendant Nos.2 & 28 have no right to file such bogus application. Hence, sought for dismissal of the application with cost.

4. Heard the arguments of the defendants No.2 & 28 and the L.A.G.P. Perused the material on record.

5. The points that arise for my considerations are as under:

1. Whether the defendant No.2 & 28 have made out a prima-facie case in their favour?

2. Whether the balance of convenience lies in favour of the defendant No.2 & 28?

3. Whether the defendant No.2 & 28 will be put to irreparable loss and injury if the application is disallowed?

4. What Order

6. My findings on the above Points are:

Point No.1: In the Negative.

Point No.2: Does not survive
for consideration.

Point No.3: Does not survive
for consideration.

Point No.4: As per the Order
for the following:

R E A S O N S

7. **POINT NO.1:** On perusal of the material on record, it reveals that the plaintiffs have maintained the instant suit against the defendants for the reliefs of partition and separate possession, claiming their 1/5th share each in the suit schedule properties. Whereas, the defendants.2 & 28 have maintained the instant application, seeking an order of injunction, restraining the defendant No.27 from providing water connections to the defendant No.3 to 26 till the disposal of the suit, when the case was set down for cross-examination of PW.1 on the grounds averred in the averments of the affidavit annexed to the application. However, the said application has been resisted by the defendant No.27 on the grounds that he being the PDO of Gram Panchayat, Shindikurabet has the authority to supply water through new connections on the applications of the villagers.

8. The plain perusal of the application filed by the defendant Nos.2 & 28 reveals that they have sought for an order of injunction, restraining the public servant from doing his duty. Though the defendant No.2 & 28 have contended that the alleged act of giving water supply to the defendant Nos.3 to 26 is illegal, not at all produced any iota of materials to substantiate the same. On the contrary, giving new water connections on the application/s of the public is the prerogative of the Panchayath in the village level and if the defendant Nos.2 & 28 are aggrieved by the act of the officials, they ought to have approached the proper forum for redressal. Hence, the remedy sought by the defendant Nos.2 & 28 under the application is else where. However, the defendant No.27 has denied it, specifically and it has created a phenomenon that a fact has been affirmed by the plaintiff and it has been denied by the defendant No.27, leading to frame an issue, which requires full pledged evidence.

9. That further, the plaintiffs have maintained the instant suit for partition and separate possession, claiming their respective shares in respect of the suit schedule properties & it is the defendant Nos.2 & 28 have maintained the instant application when the case was set down for cross-

examination of PW.1 by the defendants. Whereas, it is a settled principle of law that the defendant/defendants can maintain the application U/O 39 R 1 & 2 CPC in a suit filed by the plaintiff/plaintiffs only in cases where the defendant's claim to the relief arises out of the plaintiff's cause of action or is incidental to it. Whereas, here in the instant case, the suit is of the year 2022 and the plaintiffs have sought the relief of partition and separate possession in respect of the suit schedule properties based on the alleged failure of the defendants to effect partition inspite of the demand of the plaintiffs. On the contrary, the defendant No.2 & 28 have come up with this instant application on 10/11/2023, seeking an order of injunction, restraining the defendant No.27 from doing his official duty. Hence, it is needless to say that the cause of action for these plaintiffs to maintain the instant suit and the cause of action for filing the application by the defendant Nos.2 & 28 are altogether different and distinct and there is no nexus between the two and also it is not incidental to the cause of the action of the plaintiffs to institute the suit. In this regard by placing reliance upon the judgment reported in AIR 1975 Kar 137, Suganda Bai V/s Sulu Bai and others, this court is of the considered opinion that the defendant Nos.2 & 28 have not made out the prima-facie

case in their favour. As such and in the light of the above discussions, the **Point No.1** is answered in the **Negative**.

10 **POINT NOS.2 & 3:** In order to avoid repetition of facts, I have taken up these Points together for common discussion. In view of my findings on the Point No.1 in the Negative, question of discussing the facts of balance of convenience and irreparable loss would not arise. Accordingly, these points are answered accordingly.

11. **POINT NO.4:** For the aforesaid findings, I proceed to pass the following;

O R D E R

IA No.8, filed U/O 39 Rule 1 and 2 CPC
by the defendant Nos.2 & 28 is hereby
dismissed with cost of Rs.200/- payable
to defendant No.27.

(Dictated to the Stenographer on computer, revised,
corrected and then pronounced by me in the open
Court on this the 26th day of April 2024.)

Sd/-
(G. DEEPA)
Prl. Senior Civil Judge, Gokak.