

KABR610111362022



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C. AT
NELAMANGALA**

Present: Smt. Dr. Chandini.N. B.A.L.,LLM.,Phd.,
Addl. Civil Judge & J.M.F.C.,
Nelamangala.

Dated this 31st day of January, 2025

ORIGINAL SUIT NO.364/2022

Plaintiffs:

1. Sri. Puttaiah,
S/o. Late Muniyappa,
Aged about 60 years,
R/at. No.38, Dhanojipalya Village,
Nelamangala Taluk,
Bengaluru Rural District- 562123.
2. Sri. Rangaswamy.M,
S/o. Late Muniyappa,
Aged about 63 years,
R/at. No.35, 5th Main,
Vidyanagar, near Dasarahalli,
Bengaluru North Taluk,
Bengaluru- 560 057.

(By Sri V.S., Advocate)

V/s

Defendant:

Karnataka Power Transmission
Corporation Ltd., (KPTCL),
Represented by its Managing Director,
Corporation Office,

Having its Office at Cauvery Bhavan,
K.G.Road, Bengaluru, Karnataka- 560 009.

(By Sri H.V.D., Advocate)

PARTIES IN I.A.NO.1.

Applicant/Plaintiffs: Puttaiah and another

V/s

Opponents/Defendant: Karnataka Power
Transmission Corporation
Ltd., (KPTCL),

**ORDERS ON I.A.NO.I UNDER ORDER XXXIX RULE 1 AND
2 OF CIVIL PROCEDURE CODE.**

This interim application has filed by the plaintiffs for an order of temporary injunction restraining the defendants, their heirs, agents or any other person authorized by them from interfering the plaintiffs schedule property pending disposal of the suit.

2. Brief facts of the case and averments of the affidavit filed by the plaintiff. In support of the interim application are as follows:

3. It is submitted that the originally the property land bearing Sy.No.95/2 to the extent of 1 acre 13 guntas situated at Nelamangala Taluk, Kasaba Hobli, Arishinakunte Village, was owned by Chenamma W/o Mudlappa. Subsequently the

plaintiffs father Sri. Late Muniyappa purchased the schedule property from Chenamma W/o Mudlappa through a registered sale deed dated 20.02.1960. It is further submitted that, since then late Sri. Muniyappa was the owner and also was in peaceful possession of the schedule property.

4. It is submitted that plaintiff father late Muniyappa passed away on 11.04.1997 leaving the plaintiffs and Late Smt. Lakshamma W/o Late Muniyappa as his legal heirs. Thereafter, plaintiffs mother Smt. Laksamma passed away on 23.02.2022 leaving behind plaintiffs as legal heirs. It is submitted that, plaintiffs are now the absolute owners in peaceful possession and occupation of the suit schedule property.

5. It is submitted that, after the death of the plaintiff father late Muniyappa, the revenue records of the schedule property was transferred in the name of plaintiffs and his mother and also the RTC's from the year 1997 to 2021-22 also stands in the name of the plaintiffs.

6. It is submitted that the Encumbrance certificate dated 22.07.2022 clearly shows that the schedule property is in the name of plaintiffs father. It is further submitted that, they have also paid taxes for the schedule property. It is submitted that, since past few days the defendant

employees and contractors have been visited and carried out some form of survey in the suit schedule property and on enquiry and the same was informed to plaintiffs by the adjacent owners that, the defendant is planning to erect towers in the schedule property for transmission of high-tension electricity power line. It is further submitted that, there has been no intimation from the defendant's end for carrying out the project such as erection of the towers of high-tension power line in our property.

7. It is submitted that, they have not been informed nor of any kind of land acquisition for such act being carried out by the defendant and also, they have not given any no objection certificate (NOC) to the defendant to carry out any such activities including erection of towers in the property or drawing of power lines over their property. It is further submitted that, the defendant is interfering with plaintiff peaceful possession and enjoyment of the suit schedule property.

8. It is submitted that, without our knowledge or information, the defendant had come to the schedule property on 07/07/2022 and expressed their plan with the adjacent property owners and the said information was delivered to plaintiffs by the adjacent owners. Plaintiffs further submit that, after the said information was received by plaintiffs, they have lodged a complaint on 09/07/2022

intimating the police about the same.

9. It is submitted that, as the defendant and their agents are illegally encroaching, trespassing and interfering in the schedule property, the plaintiffs issued a legal notice dated 07.07.2022 and 26.07.2022 to the defendant. It is submitted that, the defendant does not have any manner of right, title or interest over the suit schedule property which belongs to plaintiffs. The defendant and their agents are illegally trespassing and interfering with the peaceful possession of the suit schedule property. Hence this application.

10. On the other hand, on pursuance of suit summons, the defendant has appeared through their counsel and filed written statement along with memo praying to adopt the written statement as objections to this application.

11. The brief averments of the written statement of the defendant are as follows;

It is submitted that the Plaintiffs have filed the above Suit for Judgment and Decree for Permanent Injunction restraining the Defendant, their agents, henchmen or any other person authorized and or instructed by them from interfering into the Suit Schedule Property and Award the cost and to pass such other orders or directions. The Defendant submits that, the Suit of the Plaintiff against the defendant is not maintainable under law and on facts and the same is liable to be dismissed with exemplary cost.

12. It is submitted that, The Karnataka Power Transmission Corporation Limited, for short KPTCL is a Company registered under the Companies Act, owned by the Government of Karnataka and it is represented by its Executive Engineer Ele, 400 kV SCC Division, VAS Campus, Hebbal who is in-charge of present Work. The KPTCL is a Transmission Licensee under the provisions of Sections 14 to 16 of the Electricity Act 2003, hereinafter called as the Act. The KPTCL is entrusted with the establishment of Sub-Stations and drawl of Transmission Lines for evacuation of power and for allied purpose in the interest of public. The KPTCL has its own technical persons with all technical qualification to undertake the establishment of the sub-stations, erection of Towers and drawl of Transmission lines in the Lands belongs to the Citizens.

13. The Defendant submits that, KPTCL formed a Scheme for construction of 220 kV MC Line from 400/220 kV Nelamangala Sub-Station to Cable Terminating Tower (CTT), Near Brindavana LILO Point with special design Narrow Based Towers in the existing 110 kV SBT Corridor using AAAC Moose Conductor with 'V' Strings for a route length of 13.94 kms. The said Line passes through Nelamangala, Arisina Kunte, Mallapura, Shivanapura, J.I. Gajagadhakuppe, J.I. Narayanappanapalya, K.G. Harokyathanahalli, Dombarahalli, Lakshmipura, K.G. Srikantapura, J.I. Kodagi Thirumalapura, J.I. Doddabidarakalu, Karihobonahalli, K.G. Nelakadharanahalli,

Peenya and Associated Lines vide Official Memorandum, dated 01/12/2020 bearing No. B19/2644/89-90 and accordingly, approved the Project. It could be seen from the said Official Memorandum as to the accorded approval with estimate cost. The said Project has been notified in the Gazette Notification, dated 06/02/2021 and intimated all the concerned above the proposed upgradation works and same has been published in Two daily circulated Newspapers one in Indian Express and another in Vijaya Vani, dated 18.02.2022.

14. It is submitted that, it could be seen from the said Gazette Notification and Paper Publication, it was open for the Plaintiff and all the public to respond the same at that point of time and place their Objections, if any before the concerned Authority and thereby, the Plaintiffs have maintained stock salience all that time and have filed present Suit for Bare Injunction.

15. It is submitted that, it is also ought to have been noted that, furtherance to the publication of the Notification intimating the public about the Augmentation Works and the Defendant has awarded the Tender for the Works in question having value of 94.57 Crores and 15% of the Work has been completed and should complete as per the Time Schedule and when the matter stood thus, the Plaintiffs have come forward to file the present suit seeking to stall the up-

gradation work on the existing Corridor without any basis.

16. It is submitted that, it could be noted that, the 110 kV Line in question has been existing since from 1968 and the proposed scheme would indicate that, the Defendant has proposed to Upgrade a portion of existing 110 kV Transmission Line by converting it into a 220 kV Transmission Line.

17. It is submitted that, the upgradation Work, the Tower Schedule have been fixed and same has been approved by the Concerned Authority with Special Design viz., Narrow Based Towers in the existing 110 kV SBT Corridor using AAAC Moose Conductor with 'V' Strings for a route length 13.94 Kilometer and Associated Lines and the said Line has been approved in Two Parts, total 59 Towers out of which 1 Part contains 52 Towers and 2nd Part contains 7 Towers.

18. It is submitted that, the work is under progress, the Plaintiffs claiming to be the owner of the Land to an extent of 1 Acre 13 Guntas in Sy. No. 95/2, situated at Airshinakunte Village, Kasaba Hobli, Nelamangala Taluk, have filed the present Suit against the Defendant for Permanent Injunction claiming that, the Suit Schedule Property was purchased by the Father of the Plaintiff and after death of Father of the Plaintiff and his Mother; Smt. Lakshamma was succeeded and thereafter, the said Smt. Lakshamma died and thereby, the Plaintiffs are claiming to be the owners of Suit

Schedule Property.

19. It is submitted that, the execution of the work upgrading on the existing Corridor using AAAC Moose Conductor with "V" Strings is very much essential in the interest of public in order to provide power supply to the various category of the Consumers and however, the Plaintiffs have not filed any Objections as an against the Gazette Notification and Paper Publication.

20. It is submitted that, the State of Karnataka exercising power under Section 164 of Electrical Act 2003, has issued a Notification confirming powers of the Telegraph Authority under Sections 10 to 19 and 19 A of Act for Erection of Tower, drawing of Transmission Lines to keep apparatus on the Land belongs to the Private Citizens. It is submitted that, those powers have been conferred on the KPTCL are exercising power under the provision of under Section 10 (d) of the Indian Telegraphic Act 1885. It is submitted that, having regard to the provisions of the Act, the Officer of the KPTCL have every right to enter upon the Lands belonging to the private citizen without prior notice and without their permission for the proposed of Erection of Tower and place of Apparatus for the drawing of Transmission Line. The Tower at LOCATION - T-4 (NBMD+0) has been completed and at LOCATION - T-5 (NBMB+6), the Tower Foundation complete and in view of the completion of the Towers, the 220 kV Line

will be passes on the Land of the Petitioners on the existing Corridor Area of 110 kV. It could be from the said Sketch as to the existing 110 kV Line and erecting Tower and in view of upgrading, no Tower will be erected on the Land of the Plaintiffs and replace the 110 kV Line into 220 kV Line specially designed 'V' Strings Tower to maintain same 110 kV Corridor of 22 Mtr and therefore, the Plaintiffs have suppressed the material facts that, the up gradation of 110 kV into 220 kV and as such there is no erection of Tower on the Suit Schedule Property and however, the Line will be replaced and there is no provision for acquisition for the purpose Right of Way (ROW) and he the purpose of up gradation no damage will be caused to the plaintiff, since the existing Line is from 1968.

21. It is submitted that, the Plaintiffs were fully aware as to the existing Transmission Line and for the purpose of upgradation repairing existing Line as there was no damages will be caused to the Plaintiffs under which the present Suit filed by the Plaintiffs by suppressing the material facts and thereby, the Plaintiffs are not entitle to seek for equity reliefs, since the Defendant and/or is Officers, who are discharging their Statutory Duty and therefore, the question of lodging complaint against the Defendant and its Officers and interfering in the Suit Schedule Property, are all false, since under the Statutory Provision, the Defendant and its Officers

have every right to discharge their Statutory Duties and therefore the contrary averments made in the Plaint that, the Defendant and its Officers doesn't not have any manner of right, are all false.

22. It is further submitted that the Defendant and/or its Officers have every right to enter upon the land for the purpose of drawing Transmission Line and therefore, the contrary averments made in the Plaint that, the Defendant are illegally encroaching, trespassing, interfering in the Suit Schedule Property, are all false and does not arise.

23. It is submitted that, the above narrations are crystal clear that, the Scheme of the upgradation of the 110 kV Line, which has been published in the Gazette Notification as well as the Two daily circulated Newspapers and therefore, the contrary averment made in the Plaint as to the alleged Cause of Action on 07/07/2022 and on 26/07/2022 are all false and the Notice as alleged in the Plaint on 26/7/2022 will not constitute the Plaintiff to file the Suit. Therefore, prays to dismiss the application with exemplary costs.

24. Heard the arguments from the plaintiffs and defendant.
Perused the materials on record.

25. The following points would arise for the consideration of this court:

1. Whether the plaintiffs have made out prima-facie case?
2. Whether the balance of inconvenience lies in favor of the plaintiffs?
3. Whether the plaintiffs suffer from irreparable loss and injury, if temporary injunction is not granted?
4. What order ?

26. My answers to the above points are as under:

- Point No.1 : In the Negative
Point No.2 : In the Negative
Point No.3 : In the Negative
Point No.4 : As per final order
for the following:

REASONS

27. **POINT NO.1:** It is the case of the plaintiffs that they are the absolute owners in possession of the suit schedule property and the defendant is planning to erect towers in the suit schedule property.

28. In order to prove the same, the plaintiff has produced sale deed dated 20.02.1960 executed by Channamma in favour of Muniyappa in respect of Sy.No.95/2 to an extent of 1 acre 13 guntas with boundaries towards eastern side:

Channamma's remaining property in the same survey number, towards western side Yellow Zone of Nelamangala, towards northern side Erappa's land and towards southern side Muniyappa S/o Thimmappa's. The land boundaries which are mentioned in the said sale deed does not tally with the suit schedule property. Further the plaintiffs have produced RTC extract for the year 1985-2002 in respect of Sy.No. 95/2 wherein 1 acre 13 guntas of land is reflecting in the name of Muniyappa s/o Puttaiah. Subsequently, it is reflecting in the name of Rangaswamy s/o Puttaiah and Lakshamma's w/o Muniyappa. Further, the plaintiffs have produced death certificate of Muniyappa and death certificate of Lakshamma. It is the contention of the plaintiffs that the said Muniyappa and Lakshamma are their parents. Further, the plaintiffs have produced MR No.2/1997-98, wherein it is mentioned that after death of the father of Muniyappa, the Katha is mutated in the name of Lakshamma, Rangaswamy, Puttaiah in respect of Sy.No.95/2 to an extent of 1 acre 13 guntas.

29. Further, the plaintiffs have produced RTC extract for the year 2021-23 in respect of Sy.No.95/2 reflecting to an extent of 1 acre 13 guntas in favour of Rangaswamy, Puttaiah and Lakshamma. Further the plaintiffs have produced encumbrance certificate in respect of Sy.No.95/2 and have also produced copy of information given to the

police against the defendant and also legal notice given to the defendant. Further, they have produced postal receipt and postal acknowledgment and photographs along with CD.

30. On perusal of all the documents produced by the plaintiffs, It is noticed that, the sale deed boundaries produced by the plaintiff does not tally with the suit schedule property. Further, the revenue documents cannot be taken into consideration to prove the possession of the plaintiff over the suit schedule property.

31. On the other hand, it is the contention of the defendant that they got the approval for construction of 220 K.V MC line and the same was notified in the Gazette and the same was also circulated in 2 newspapers. Further, also submits that the defendant is exercising the power under section 164 of Electrical Act 2003 and under provisions of Section 10-19 and 19A of Electrical Act 2003 and also exercising the power vested section under 10(d) of Indian telegraphic act. Hence, the defendant submits that they are carrying out activities as per law and the plaintiff cannot maintain the suit for bare injunction. In order to support the contention of the defendant, the defendant has produced copy of official memorandum dated 01.12.2020, gazette notification wherein the proposal is proved for work of construction of 220kV Multi circuit along with paper publications and have also produced copy of work award and copy of check survey along with

other corresponding letters. Further the defendant has also relied upon Judgment in ILR 2003 Karnataka 4678, 2017(5) SCC 143, the order passed in WP No.113268/2019 and in WA No.100366/2022.

32. On perusal of the said citations and on perusal of Section 164 and Section 10 to 19 of Electrical Act and Section 10(d) of Indian Telegraphic act, it is clear that the defendant is permitted for carrying out the construction of the electricity lines. Such being the case, the plaintiffs who themselves has not proved their possession over the boundaries of the suit schedule property cannot seek any relief against the defendant who are working as per law. Therefore, this court is of opinion that the plaintiffs have failed to made out prima facie and accordingly, I answer this point in the Negative.

33. **Point No.2 and 3:** These points are interlinked with each other. Hence, to avoid repetition of facts, these points are discussed together. As stated supra, the plaintiffs have not made out prima-facie case. In this regard this court relies on a decision passed by the Hon'ble High Court Of Karnataka in the case of Gowrishankar Swamigalu V/s. Siddhaganaga Mutt & Ors reported in ILR 1989 KAR 1701, wherein the Hon'ble High Court of Karnataka held as follows:-

“The existence of a prima facie case in the matter of granting injunction is really the harbinger or all

the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself..."

This decision is aptly applicable to the case on hand as the plaintiffs have not made out prima facie case. Therefore, this court is of the opinion the plaintiffs have failed to prove even these points in their favour. Accordingly Point No.2 and 3 are answered in the Negative.

34. **POINT NO.4:** In view of the reasons and discussion made on points No.1 to 3, I proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w. Sec. 151 of Civil Procedure Code is hereby rejected.

No order as to costs.

(Dictated to the Stenographer on computer, transcribed by her, the transcript corrected and pronounced by me in the open court on this 31st day of January, 2025)

Sd/-
Addl. Civil Judge and JMFC.,
Nelamangala.