

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC., AT GOWRIBIDANUR**

Dated this 1th day of April 2023

:: PRESENT ::

SRI. SACHIN P.M.

B.A., L.L.B., (Hons)

Prl. Civil Judge and JMFC.,
Gowribidanur

ORIGINAL SUIT NO.390/2018

PLAINTIFF/S: Sri. Nagaraju
S/o Late Gangappa,
Aged about 27 years,
R/at No.6, Sante Maidana,
Gowribidanur Town,
Gowribidanur Taluk,
Chikkaballapur District.

(Rep. by Sri. V.G.N, Advocate)

-VS-

DEFENDANT/S: 1. The Deputy commissioner
Chikkaballapur District,
Chikkaballapur,

2. The Thasildar
Gowribidanur Taluk,
Gowribidanur,

3. Smt. Gangadevi
D/o Late Doddagangappa,
Aged about 45 years,
R/at Gangasandra Village,
Kasaba Hobli,
Gowribidanur Taluk,
Chikkaballapur District.

**(D-1 and 2 Rep. by Sri. A.G.P
and D-3 is Rep. by Sri.R.N.G.,
Advocate)**

**ORDER ON I.A NO.I FILED BY PLAINTIFF
UNDER ORDER XXXIX RULE 1 & 2 OF C.P.C.**

The plaintiff has filed this I.A under Order XXXIX Rule 1 & 2 read with Section 151 of C.P.C. praying for an ad-interim order of temporary injunction restraining the defendants, their agents, legal heirs, supporters or anybody else claiming through them from damaging the borewell pump set, obstructing the draw of water from the borewell and obstructing the agricultural operation work of the plaintiff over the suit schedule property, till the disposal of this suit.

2. As per the plaint averments and affidavit annexed to the I.A the case of the plaintiff /applicant in brief is as under:

That one deceased Gangappa and his wife deceased Kamma had four daughter and three sons namely Manjula, Arunamma, Venkatamma, Lakshmi, Annayappa, Narasimhamurthy and the plaintiff Nagaraja. That the suit schedule property

was granted by the Government in favor of the mother of the plaintiff and that his mother was in peaceful possession and enjoyment of the suit schedule property. That all the revenue documents stood in her name and after her death, the plaintiff is in peaceful possession and enjoyment of the suit schedule property as her legal heir. That the mother of the plaintiff dug a borewell in the suit schedule property and filed an application before the Bangalore Electricity Board Ltd., for the purpose of obtaining electricity supply and that the electricity was accordingly supplied through I.P set No.402/2015 dated 30/03/2015.

3. It is averred that the defendant are attempting to dispossess the plaintiff and interfere with the peaceful possession and enjoyment of the suit schedule property and also attempting to damage the borewell pump set. That the defendants are also obstructing the plaintiff from drawing water from the borewell and obstructing the agricultural operation work of the plaintiff over the suit schedule property. That the plaintiff lodged a complaint before the concerned police but no action has been taken against the defendants. That the boundaries

of the suit schedule property and the property of the defendant is different and that the defendant No.3 in collusion with the defendant No.2 are trying to demolish the borewell and pump set without following the due process of law. Hence, this suit.

4. The plaintiff has sworn to an accompanying affidavit reiterating the entire averments of the plaint and stating that the plaintiff will be put to great loss, hardship and injury if the application is not allowed but no hardship or injury will be caused to the other side if the application is allowed. Therefore, the plaintiff has prayed that this Court may be pleased to grant temporary injunction against the defendants.

5. In pursuance of the suit summons, the defendants No.1 and 2 have appeared before the Court through the learned A.G.P but have not filed their written statement or objections to the I.A No.1. The defendant No.3 appeared before the Court and filed her written statement cum objections to the I.A No.1.

6. The defendant No.3 has denied the entire averments of the plaint and has contended that the

defendant No.3 is the absolute owner in possession and enjoyment of the suit schedule property and that the plaintiff has filed this suit to harass the defendant No.3. That the defendant No.3 had filed a suit in O.S No.289 of 2015 on the file of this Court for the relief of permanent injunction against the plaintiff herein and that the said suit was decree in favor of the defendant No.3. That the said decree is still in force and that the plaintiff has not stated these facts in this suit.

7. It is contended that as per the said decree, the concerned Thahashildar, Lokayuktha and the concerned revenue and survey authorities have surveyed the property and delivered the possession of the property by fixing the boundaries with border stones but the plaintiff has illegally entered into the property and removed the border stones to harass the defendant No.3. That the defendant No.3 is in peaceful possession and enjoyment over the property from the date of its acquisition and that the plaintiff has filed this suit with wrong schedule boundaries with a mala-fide intention. On these grounds, it is prayed that the suit and the I.A may be dismissed with cost.

8. On considering the plaint, I.A No.1, its accompanying affidavit and the written statement cum objections, the points that arise for consideration are as under:

POINTS

1. Whether the plaintiff /applicant has made out a prima-facie case for the grant of temporary injunction?
2. Whether the balance of convenience/inconvenience lies in favor of the plaintiff/applicant?
3. Whether irreparable loss and injury would be caused to the plaintiff/applicant if the temporary injunction is refused?
4. What order?

9. My answer 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

10. Point No.1: This is a suit for bare injunction in respect of the suit schedule property bearing Sy.No.328 measuring 03 acres and 20 guntas situated at Gangasandra Village, Kasaba Hobli, Gowribidanur Taluk. The case of the plaintiff has already been set out in brief. The learned Counsel for plaintiff has argued that the plaintiff has made out a prima-facie case and the balance of convenience lies in favor of the plaintiff. If temporary injunction is not granted, the plaintiff would be put to hardship as the defendants would succeed in destroying the borewell and pump house situated in the suit schedule property. On the other hand, the learned counsel for the defendant No.3 has argued that there is no borewell or pump set in the suit schedule property and that the defendant No.3 is in peaceful possession and enjoyment of the suit schedule property.

11. It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the Court to grant an interlocutory order of injunction under Order XXXIX Rule 1 and 2 of C.P.C. (1) the plaintiff has to establish a prima facie case, (2) the

balance of convenience/inconvenience is in favor of the party seeking the relief and that (3) the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favor. The grant of injunction is a discretionary relief and the party should come to court with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima facie case in favor of the party seeking the order.

12. I have considered the documents produced by the plaintiff and the defendant. The plaintiff has produced a photocopy of the family tree affidavit, a photocopy of the grant certificate dated 19/04/2003, a photocopy of electricity bills, a photocopy of the letter dated 21/06/2018 and computerized R.T.Cs of the suit schedule property.

13. On the other hand, the defendant No.3 has produced a certified copy of the mutation register extract, a photocopy of the letter dated 06/10/2017 issued by the Thahashildar of Gowribidanur to the Assistant Executive Engineer of BESCOM, Gowribidanur, encumbrance certificate, death certificate of one Kamma, a certified copy of the

cultivation/saguvali register, endorsement dated 09/04/2019 issued by the Karnataka Lokayuktha and its final scrutiny note dated 01/04/2019, certified copy of the judgment and decree passed by this Court in O.S No.289 of 2015 dated 08/10/2015, a tax paid receipt, a patta book, a computerized R.T.C of the property bearing Sy.No.528/P1, a mutation register extract of the property bearing Sy.No.528/P1, notarized copy of the reminder dated 05/04/2018 issued by the Karnataka Lokayuktha, notarized copy of the letter dated 01/11/2017 issued by the Thahashildar of Gowribidanur to the P.S.I of Gowribidanur Rural Police Station, photocopy of a kethuvara patti, photocopy of a mutation register extract, photocopy of an encumbrance certificate, photocopy of the letter dated 06/10/2017 issued by the Thahashildar of Gowribidanur to the Assistant Executive Engineer of BESCOM, Gowribidanur, photocopy of the letter dated 12/10/2017 issued by the Thahashildar of Gowribidanur to the Karnataka Lokayuktha, photocopy of the letter dated 23/10/2017 issued by BESCOM, Gowribidanur to the Thahashildar of Gowribidanur, photocopy of the letter dated 02/03/2019 issued by the Thahashildar of Gowribidanur to the Deputy Commissioner of

Chikkaballapur District, photocopy of the letter dated 02/11/2017 issued by the Tahashildar of Gowribidanur to the P.S.I of Gowribidanur Rural Police Station, notarized copy of the orders dated 28/06/2018 passed by the Tahashildar of Gowribidanur and three photographs.

14. It is trite to note that while dealing with the applications of this nature, the only function of the Court is to see whether the applicants have made out a prima-facie case and in whose favor the balance of convenience/inconvenience lies and in case of refusal to grant temporary injunction, which side would suffer the most loss and hardship. It is a well settled principle of law that when there is a doubt regarding the case of the plaintiff, injunction cannot be granted.

15. The plaintiff has claimed that he is the absolute owner in possession and enjoyment of the suit schedule property and that the same was granted to his mother by the Government. It is averred that the mother of the plaintiff built a pump house and dug a borewell in the suit schedule property the use of which is being obstructed by the defendants No.1 to 3.

16. On perusal of the documents produced by the plaintiff and the defendant No.3, it appears that the pump house and borewell has been constructed in the property of the defendant. The orders dated 28/06/2018 passed by the Tahashildar of Gowribidanur and the endorsement dated 09/04/2019 issued by the Karnataka Lokayuktha and its final scrutiny note dated 01/04/2019 appear to mention that the mother of the plaintiff encroached upon 01 acre of the property of the defendant and constructed the borewell and pump house. The final scrutiny note of the Karnataka Lokayuktha also notes in paragraph No.97 therein that it is reported that the encroachment has been cleared except the pump house. As such, the claim of the plaintiff that there is a pump house in the suit schedule property does not appear to be genuine or backed by documents. The plaintiff has also not disclosed these facts nor disclosed regarding O.S No.289 of 2015 in his plaint and the plaintiff appears to have intentionally withheld this information from his Court. The relief of injunction is an equitable relief and the party who seeks equity must also do equity. The conduct of the plaintiff appears to be shady and does not inspire the confidence of this

Court at this stage. Moreover, the plaintiff has not produced any document at this stage to show the existence of a pump house and bore well in the suit schedule property and the burden of proof is upon the plaintiff to prove the same by leading cogent oral and documentary evidence at the stage of trial. Under such circumstances, it can be opined that the plaintiff has not made out an arguable case and therefore, whenever there is no arguable case, it can be said that the plaintiff has not made out a prima-facie case. For these reasons, **the Point No.1** is answered in the **Negative**.

17. Point No.2 and 3 :- Both these points are taken up together for common discussion to avoid repetition of facts. The Court has to see whether the applicant will sustain such injuries or loss which cannot possibly and adequately remedied by way of damage and the said damage would be inadequate in case of the success of the applicant. As far as the question of balance of convenience/inconvenience is concerned, the Court has to see the mischief or inconvenience which may be caused to either of the parties and see whether it is necessary or proper to maintain status quo till the adjudication of dispute

finally decided. The ingredients are to be established by the party who seeks injunction in his favor. The grant of injunction is a discretionary relief and the party who claims such a relief should come to the Court with clean hands and place all the materials before the Court so that Court will satisfy about the case in favor of the parties seeking the order.

18. The plaintiff has withheld the facts regarding the suit filed by the defendant No.3 herein against the mother of the plaintiff and the fact regarding the various correspondence and proceedings before the Thahashildar of Gowribidanur and the Karnataka Lokayuktha in respect of the encroachment of the land of the defendant No.3 and construction of a borewell and pump house therein. There are no documents at this stage which shows that here exists a borewell and pump house in the suit schedule property the use of which is being obstructed by the defendants. The conduct of the plaintiff in not disclosing relevant facts in his plaint also does not inspire the confidence of this Court at this preliminary stage. The plaintiff has also not made out a prima-facie case at this preliminary stage of the proceedings. Therefore, I hold that the balance

of convenience/inconvenience does not lie in favor of the plaintiff and I am of the view that if the I.A is not allowed, the plaintiff would not be put to irreparable loss and injury. Hence, I have answered **Point No.2 and 3** in the **Negative**.

19. Point No.4 :- In view of my findings on Points No.1 to 3, the plaintiff is not entitled to the relief of temporary injunction as sought for. Hence, I proceed to pass the following:

ORDER

I.A filed by the plaintiff
under Order XXXIX Rule 1 & 2
read with Section 151 of C.P.C
is hereby dismissed.

Cost of this application will
follow the result of this suit.

(Typed by me, corrected, signed and then pronounced in the open court on this 1st day of April 2023).

SD/-

(SACHIN P.M)

**Prl. Civil Judge & J.M.F.C.
Gowribidanur**