

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Sri. Kanchi Mayanna Goutam, B.A.L.,LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 20th day of June 2020.

O.S. No. 83/2017

Plaintiff/s : 1. Sri. Kumara D, S/o Duggappa,
Age 26 years,
2. Sri.Ravi A, S/o Angu,
Age 29 years,
3. Sri. Sathisha C, S/o Chellu,
Age 27 years,
4. Sri. Narayana, S/o Dayyu,
Age 40 years,
5. Sri. Lokesha, S/o Linga,
Age 30 years,
6. Sri. Krishna, S/o Govinda,
Age 36 years,
7. Sri. Nagaraj K, S/o Krishnappa,
Age 40 years,
All are labourers,
All are R/o Gubbibailu, Jayapura Village,
Jayapura Post, Koppa Taluk.
(Represented by Sri. Prasanna T.D., Adv.,)

V/S

Defendant/s : The Panchayath Development Officer,
Jayapura Village Panchayath,
Jayapura Post, Koppa Taluk.

(Represented by Sri. M.H. Sudheer Kumar
Murolli, Adv.,)

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**ORDER ON I.A. NO. 3 FILED BY THE PLAINTIFFS
UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF
C.P.C.**

The present application is filed by the plaintiffs under Order 39 Rule 1 and 2 R/W section 151 of C.P.C. seeking an order of temporary injunction against the defendant by restraining the defendant, its elected members, agents, servants, followers or anybody claiming through the defendant for not to dump garbage and waste things of Jayapura Town in the suit schedule property, till pending disposal of the suit.

2. In the affidavit annexed to the application, the plaintiff No.1 stated that he is residing at Gubbibailu near Jayapura. It is alleged that the Survey No.115 of Jayapura Village, Megunda

Hobli, Koppa Taluk is a government survey number and it is reserved for the purpose of cattle grazing (Gomala) which is measuring 89 acres 7 guntas and also in the same survey number 1 acre is granted for the purpose of Rudra Bhoomi (Cremation Ground). Further it is alleged that the defendant panchayath has got no right in or over the above said Sy. No.115 of Jayapura Village and the land is not granted by the government in the said survey number in favour of the defendant panchayath. The State Government has approved 5 acres of land in Sy.No.115 of Jayapura Village for the purpose of granting sites for site-less families. The said land is situated adjacent to Rudrabhoomi. The house of the plaintiffs are situated just 200 meters away from the said Rudrabhumi. In between their house properties and Rudrabhoomi, there is 2 acres of land kept vacant in the suit schedule property. The defendant village panchayath has illegally decided to dump garbage of Jayapura Town in the suit

schedule property. It is further stated by the plaintiffs that for the purpose of dumping the garbage, on 1-12-2017 at about 11:00 a.m. the defendant and its elected members along with surveyor came to the suit schedule property and measuring the suit schedule property for the purpose of preparing sketch for reserving the land for dumping garbage of Jayapura Town. The said act of the defendant was objected and stopped by the plaintiffs. The defendant panchayath and its elected members were threatened the plaintiffs that they will dump the garbage and waste of Jayapura Town forcibly in the suit schedule land and reserve the land for that purpose. If the defendant panchayath succeeds in its attempt to dump the garbage and waste things of Jayapura Town, certainly it pollute the atmosphere, and it will impact the health of surrounded families of Gubbibailu S.C. Colony. Hence, the present suit is filed in representative nature. It is further stated that the plaintiffs have got prima-facie case and

the balance of convenience in their favour. If the order of temporary injunction is not granted against the defendant, the plaintiffs will be put to irreparable loss, injury, hardship and inconvenience which cannot be compensated in terms of money. On the other hand, no prejudice or hardship will be caused to the other side if temporary injunction is granted. Hence, prays to allow the application as prayed.

3. The defendant appeared through its counsel and filed detailed written statement and memo to consider the contents of written statement as objection to I.A. In the written statement the defendant denied the entire contentions urged by the plaintiffs and submitted that they have already invested huge amount and formed the road to the suit schedule survey number. Further, the defendant panchayath submitted that it is dumping the garbage in the suit schedule property since from several years and also the

defendant panchayath has applied for the grant of land for the purpose of dumping yard. But, the plaintiffs unnecessarily raised the objection and disturbed the dumping of garbage which caused the heavy nuisance for the villagers of Jayapura. The questioning of panchayath resolution before the civil court is not maintainable and the plaintiffs are not having any right over the suit schedule property. Hence, prays for dismissal of the application.

4. Heard the counsel for the plaintiffs and defendant. Upon perusal of the averments in affidavit accompanying the application, the objection putforth by the defendant and other materials submitted by the plaintiffs and defendant, the following points were arisen for my consideration:

- 1) Whether the plaintiffs have made out prima facie case to grant temporary injunction?

- 2) Whether the plaintiffs prove that the balance of convenience lies in their favour?
- 3) Whether the plaintiffs prove that they will be put to irreparable loss and injury if temporary injunction is not granted?
- 4) Whether the plaintiffs are entitled for order of discretionary relief of temporary injunction as prayed in I.A. No. 3 ?
- 5) What order?

5. My findings 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 : In the negative
Point No. 5 : As per the final order
for the following reasons.

REASONS

6. **Point No.1:** Before plunging into the facts of the case, it is very important to note that this case is filed as a representative

case and I.A. 1 is filed under order 1 rule 8 R/W section 151 of C.P.C. seeking permission of the court to file this present suit. The same was allowed and on the basis of that, the paper publication was taken. On the basis of paper publication, three persons were appeared and they are impleaded as plaintiff No. 5 to 7 in the present case.

7. In the present application the plaintiffs are seeking relief under Order 39 Rule 1 and 2 R/W section 151 of CPC. Bare reading of this provision, it is clear that, with an application seeking order of an injunction, the plaintiff must prove that he has a prima facie right, title and interest in the suit claim as well as the provision clearly indicates that the right and title has to be examined with the contents of affidavit and supporting documents annexed to the application.

8. In the present case, the plaintiffs have filed detailed affidavit in support of I.A., for that, the defendant panchayath filed detailed written statement.

9. It is the case of the plaintiffs that the defendant panchayath is illegally dumping the garbage of the Jayapura Town in the suit schedule property even though the suit schedule property has not granted to the defendant panchayath. The suit schedule property is surrounded by the residential sites which is going to be granted by the government and also the said suit schedule property is within the survey No. 115 of Jayapura Village, which is reserved for the purpose of gomala. If the defendant succeeds in the attempt of dumping garbage of Jayapura Town, certainly it will pollute the atmosphere in the surrounding area of the suit schedule property. It is the case of the defendant panchayath that, they are dumping the garbage in the suit schedule property

from several years by using high standard method and also applied for the grant of the suit schedule land for the said purpose. The defendant panchayath being the public authority has every right to get the land in Sy.No. 115 of Jayapura Village for the purpose of dumping the garbage.

10. Prior to plunging into appreciation of the application on merits, first let us look into certain basic facts pertaining to the present case. As per the allegations of the plaintiffs the Sy.No. 115 of Jayapura Village is reserved for gomala purpose. To prove their contention the plaintiffs have produced the copy of RTC of Sy.No. 115 of Jayapura Village wherein it shows that the whole Sy.No. 115 is reserved for gomala and graveyard. On the other hand, the defendant also admitted that the Sy.No. 115 is a gomala land. But, it is the contention of the defendant that, being the government body the government can reserve any part

of the gomala land for any other purposes for public utilization. In other words, the defendant panchayath contended that the suit schedule property is allotted and granted to them for the purpose of dumping the garbage and they are dumping the garbage from several years by using all high standard methods for safety and cleanliness. To prove their contention the defendant panchayath produced the copy of office resolutions of the Office of Deputy Commissioner, Chikmagalur, wherein as per the order, dated 28.7.2019 the Deputy Commissioner, Chikmagalur has granted the land of 2 acres in Sy.No. 115 of Jayapura Village to the defendant panchayath to form the garbage dumping yard. (ಘನ ಮತ್ತು ದ್ರವ ತ್ಯಾಜ್ಯ ನಿರ್ವಹಣಾ ಘಟಕ). The Deputy Commissioner, Chikmagalur being the Administrative Head of the District and also being the Revenue Authority has granted 2 acres of land in Sy.No. 115 of Jayapura Village to the defendant panchayath for the purpose of garbage dumping yard (ಘನ ಮತ್ತು ದ್ರವ ತ್ಯಾಜ್ಯ

ನಿರ್ವಹಣಾ ಘಟಕ). The plaintiffs have pleaded that the defendant panchayath has no right over the suit schedule property which is a gomala land and it is not granted to the defendant panchayath. By producing the copy of the order passed by the Deputy Commissioner, Chikmagalur, the defendant panchayath at this stage prima facie established that the suit schedule property is granted to the defendant panchayath for the purpose of garbage dumping yard (ಘನ ಮತ್ತು ದ್ರವ ತ್ಯಾಜ್ಯ ನಿರ್ವಹಣಾ ಘಟಕ).

11. Further, the defendant panchayath also produced total 9 agreements to show that the dumping yard in the suit schedule property is existing from the year 2006. The grant orders made by the Deputy Commissioner, Chikmagalur and the agreements produced by the defendant panchayath is not disputed by the plaintiffs.

12. The plaintiffs further contended that even though the land is granted for the purpose of dumping garbage yard, the said grant is against to their health, safety and interest. But, these contentions against to the grant cannot be raised by the plaintiffs before the Civil Court. There is a proper forum is available for the plaintiffs to question the grant order made by the Deputy Commissioner, Chikmagalur. No doubt that after filing of suit, the said grant order is passed by the Deputy Commissioner, Chikmagalur. But, the agreements produced by the defendant panchayath shows that from the year 2006 itself the dumping yard is situated in the suit schedule property. Nearly from 2006 it is 14 years the dumping yard is situated in the suit schedule property. It is not the prayer of the plaintiffs to give necessary direction to the defendant panchayath to maintain the dumping yard with hygienic way. It is the prayer of the plaintiffs to restrain the defendant from dumping the garbage in the suit

schedule property. The suit schedule property is already granted to the defendant for the specific purpose of dumping yard only. Such being the case, such resolution of the panchayath and also the grant order made by the Deputy Commissioner has to be questioned before the appropriate forum. The grant of the suit schedule property to the defendant panchayath for the purpose of dumping yard infractuous the suit prayer on the basis of the pleading and also the alleged cause of action. The grant itself falsifies the cause of action pleaded by the plaintiffs.

13. The Panchayath Raj Act is the source for the defendant panchayath to perform its duties. The Panchayath Raj Act has given the authorities to the village panchayath to control and regulate the drainage and garbages and also cleanliness of the village. At this stage, the civil court cannot interfere with the powers of the defendant panchayath to get the land granted from

the Deputy Commissioner, Chikmagalur and use the same for the purpose of dumping yard. Whether the plaintiffs have raised the objection before the Deputy Commissioner, Chikmagalur or filed any petition by objecting the grant of the suit schedule land for the purpose of dumping yard is not averred by the plaintiffs. The Panchayath Raj Act has even casted the burden on the defendant panchayath that the defendant panchayath has to take necessary steps for the protection of the natural resources like air, water and environment etc., Whether the plaintiffs have raised their objections before the panchayath is also not pleaded by the plaintiffs. Why the plaintiffs were silent from 2006 is also not explained by the plaintiffs at this stage. At this stage, no documents are produced by the plaintiffs to show that the garbage yard is creating a nuisance and environmental pollution in the locality. To hold that the garbage yard is not running scientifically and it is creating environmental pollution, the full

fledged trial, documents and evidence is required. Without the proper documents and evidence only on the basis of the photographs it cannot be held that the dumping yard is creating environmental pollution as it is not scientifically managed. Both the plaintiffs and defendant have produced the photographs in support of their claims. But, the photographs are not sufficient to hold at this stage that the dumping yard is creating nuisance. Considering all these points, if the defendant panchayath is restrained to dump the garbage in the granted land, it has its own impact on the other factors which are connected with the garbage. Why the plaintiffs have not raised their objections before the Deputy Commissioner, Chikmagalur is the main fatal to consider the plea of the plaintiffs at this stage. The plaintiffs have the right to question the resolution passed by the defendant panchayath and also the order of the Deputy Commissioner, Chikmagalur before the appropriate forum. By considering all these facts, the

plaintiffs failed to made out prima facie grounds to allow the application. Accordingly, point No. 1 is answered in the negative.

14. **Point No. 2 to 4:-** In view of my findings on Point No. 1, it would not be incumbent on the part of this court to answer the point No. 2 to 4. The said view is also supported by the decision of our own Hon'ble High Court in Sri. Gowrishankara Swamigalu V/S Sri. Siddhaganga Mutt and reported in ILR 1989 KAR 1701, 1989 (2) Kar.L.J. 548, wherein the Hon'ble High Court has observed as under:

“The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all 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. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between Even granting that the plaintiff has an invincible prima facie case, he will not be entitled *ex debito iustitiae*, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case.”

15. The prayer of the suit and also the prayer of this I.A. is one and the same which is also one of the ground which is making the plaintiffs to unable to get the relief as claimed in the I.A. The suit prayer and the prayer of the I.A. is one and the same. Such kind of prayers cannot be granted. Further, the

prayer of I.A. must be by way of aid to the suit relief and it should not be a main relief.

16. The defendant panchayath has got the suit schedule land from the Deputy Commissioner, Chikmagalur for the purpose of dumping yard only. If the defendant panchayath is not maintaining the dumping yard scientifically and if it is causing any nuisance, then the plaintiffs have every right to question the same and it also give raises to the fresh cause of action. No prayer is sought to give direction to the defendant panchayath to maintain the garbage dumping yard with all high standards without giving any rooms for nuisance or environmental pollution. The maintenance of the garbage and dumping yard is the primary duty of every citizen as well as the defendant panchayath also. If the defendant panchayath fails to do its duty, every citizen has right to question the same in an appropriate

legal action. At this stage, for the reasons mentioned in the point No. 1, the plaintiffs failed to make out prima facie case in their favour. Hence, point No. 2 to 4 are answered in the negative.

17. **Point No. 5:** On the above said reasoning, I proceed to pass the following order.

ORDER

I.A. No. 3 filed by the plaintiffs under order 39 rule 1 and 2 R/W section 151 of C.P.C. is hereby dismissed.

In the result, the interim order of status-quo granted by order dated 15.12.2017 is hereby stands vacated.

No order as to cost.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 20th day of June, 2020)

Sd/-xxxx 20/6/2020
(Kanchi Mayanna Goutam)
Civil Judge & JMFC.,
Koppa.