



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

DATED: THIS THE 8th DAY OF AUGUST 2023

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Addl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 102/2022

BETWEEN :

Sri. Roshan Gowda K.M.
S/o Mallesh K.R.
Aged about 26 years,
R/o Kiragunda Village,
Gonibeedu Hobli,
Mudigere Taluk.

... Plaintiff

(By Sri. M.M.Raghavendra, Adv.,)

AND :

The Panchayath Development Officer,
Kiragunda Village Panchayath,
Kiragunda, Gonibeedu Hobli,
Mudigere Taluk.

...Defendant

(By Sri.N.S.Jayaram, Adv.,)

**PARTIES ON I.A.NO.I****BETWEEN :**

Sri. Roshan Gowda K.M.

... Applicant

AND :

The Panchayath Development Officer,

...Opponent

ORDERS ON I.A.NO.I

The Plaintiff has filed the present application under Order XXXIX rule 1 & 2 of Code of Civil Procedure, seeking an interim order of temporary injunction restraining the defendant, its men, agents, servants or anybody claiming through it from interfering with the plaintiff's peaceful possession, cultivation and enjoyment of the suit schedule property till disposal of the present suit.

2. The Plaintiff has contended that, he is the absolute owner in possession and enjoyment of the suit schedule property having acquired the same through registered partition deed dtd: 05.02.2001. Since the plaintiff was minor at the time of partition, the suit property was managed by his mother. After the plaintiff attained age of majority, he is



in possession, occupation, cultivation and enjoyment of the suit property which is a wet land growing arecanut, pepper and jungle woods. The defendant having no manner of right, title or interest over the suit property, has illegally put an electric motor to the pond and tried to obstruct the plaintiff enjoyment of the suit property. Even though the matter was reported to the Gonibeedu Police, no action has been taken against the defendant. On these averments the plaintiff has sought for allowing the present application.

3. The defendant has filed a memo adopting the written statement as objection to the present application. In the written statement, the defendant has not disputed the fact that the suit property was allotted to the plaintiff vide partition deed. The defendant has contended that the pond alleged to be situated in the suit schedule property is an open well constructed by the rural water supply and sanitation department for the welfare of Kiragunda and Hanthuru Villagers. Electricity connection has been sanctioned way back in the year 1997 and Electric meter bearing R.R.No.ANP504 has been installed. There are 6 cisterns to the said water units and many residents are the beneficiaries of the said water units.



4. The defendant has further contended that presently electric bill is issued to the name of Hanthuru Grama Panchayath and correspondences have been made for transfer of said bill to the name of defendant. The defendant is a local body meant for the welfare of residents is making use of water for the welfare of residents openly, uninterruptedly, peacefully open to the knowledge of plaintiff and also the whole world. Thus, the plaintiff has suppressed the material facts and has filed the present suit. On these averments, the defendant has sought for rejection of the application.

5. In view of the above contentions, the following points arise for consideration.

- 1. Whether the plaintiff has made out prima-facie case in his favour to grant temporary injunction as prayed for?***
- 2. Whether the balance of convenience lies in favour of plaintiff?***
- 3. Whether the Plaintiff will be put to irreparable injury if the injunction is not granted in his favour?***
- 4. What order?***



6. Heard both side and perused the entire materials available on record. Now, the findings of this Court on the above points are as follows:

Point No.1 : ***In the Affirmative***

Point No.2 : ***In the Negative***

Point No.3 : ***In the Negative***

Point No.4 : *As per final order
for the following:*

REASONS

7. **POINT No.1 to 3:** Since these points require common consideration of materials on record, they are taken for discussion together so as to avoid repetitions.

The Plaintiff has filed the above suit for the decree of permanent injunction against the defendant with respect to the suit schedule property and also for mandatory injunction for removal of electric motor from the pond situated in the suit schedule property. The present application is filed along with the suit seeking interim order of temporary injunction restraining the defendant from interfering in any manner with



the plaintiff's possession and enjoyment of the suit schedule property.

8. To show the prima-facie case, the plaintiff has deposed to an affidavit filed in support of the present application wherein stated that he is the absolute owner in possession and enjoyment of the suit property which is acquired through partition. In support of this, the plaintiff has produced the copy of registered partition deed dtd: 05.02.2001 wherein as per schedule 'K', the suit property was allotted to the share of plaintiff and his mother Smt.K.M.Latha. On perusal of the RTC pertaining to the suit property, it could be seen that the revenue records is mutated to the name of plaintiff vide M.R.No.H9/2019-20 and mentioned as Hakku bidugade. The said MR is not produced by the plaintiff but the MR which is produced by the plaintiff is T4/2019-20 with respect to the mortgage. As per the recitals of partition deed, it could be seen that the suit property was allotted to the joint share of plaintiff and his mother but as per the RTC the only name of plaintiff has been mutated on the basis of release.



9. It is the case of plaintiff that the defendant having got no manner of right what so ever has put electric motor to the pond situated in the suit schedule property. Whereas it is the contention of defendant that the said pond is an open well constructed by the Rural Water Supply and Sanitation Department. The alleged electric motor is installed way back in the year 1997 and electricity supply has also been obtained for the purpose of said motor. Thus, it is not in dispute that there exists a pond/open well in the suit schedule property.

10. It is the specific case of plaintiff that the defendant has installed the electric motor but it is not clearly stated in the plaint or the present application as to when exactly the defendant had installed an electric motor to the pond. It is the case of defendant that the said motor was installed way back in the year 1997 and for the purpose of supplying water to the villagers of Hanthuru and Kiragunda village.

11. During the course of arguments, learned counsel for the plaintiff submits that in the pretext of drawing water from the well, the defendant is obstructing the plaintiff's peaceful possession, occupation and enjoyment of the suit



schedule property. On the other hand learned counsel for defendant argued that the electric motor was installed even during the life time of plaintiff's father and many residents are the beneficiaries of the said water. The defendant being the local body, it has to consider the welfare of residence by supplying the water. Learned counsel further submits that if the injunction is granted it would not only cause hardship to the defendant but also to the residents of Hanthuru and Kiragunda Village.

12. Though there is no materials put forth by the defendant at this stage to show that the alleged electric motor was installed in the year 1997, its say that the residents are the beneficiaries of water drawn from the pond situated in the suit schedule property cannot be kept at dark. Likewise though the defendant being a local body having claimed to drawing the water from the pond, this act shall in no way interfere or obstruct the plaintiff's peaceful possession, occupation and enjoyment of the suit schedule property.

13. If all the above aspects are carefully considered on basis of the materials available on record at this stage, it is



thus clear that the fact whether the alleged electric motor installed in the pond is installed recently or during the year 1997 needs to be decided after full fledged trial so as to consider the fact of obstruction. It is the case of defendant that the villagers of Hanthuru and Kiragunda are the beneficiaries of the water drawn from the said well.

14. Though the defendant has not placed any materials with respect to this aspect, considering the fact put forth by the defendant, this court considers that if the temporary injunction is granted in favour of plaintiff then the defendant would be put to injury which cannot be compensated in terms of money. Likewise, the order of rejecting prayer of plaintiff for temporary injunction shall not enable the defendant to cause obstruction to the plaintiff's peaceful possession, cultivation and enjoyment of suit property other than drawing water if it is doing so from the well admittedly situated in the suit schedule property. Therefore, though the plaintiff has got prima facie case at this juncture, balance of convenience does not lie in his favour and hence Point No.1 is answered in **Affirmative**, point No.2 and 3 are answered in **Negative**.



15. POINT No.4: In view of the above findings on point No.1 to 3, this Court proceed to pass the following.

ORDER

I.A. No.I filed by the Plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is rejected.

For Issues by:

(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 8th day of August, 2023)

Sd/-

(Vishwanath.A)

Addl. Civil Judge & JMFC,
Mudigere.

***BSM**