

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
NAVALGUND**

O.S. No.148/2022

Dated this the 12th day of June, 2023

Present : Sri. Santhosh M.S.

B.A., LL.B., (Hons); LL.M.,

Civil Judge and JMFC., Navalgund.

Plaintiffs :1. Sri. Nagaraj S/o.Bheemaraddi Honnaraddi
Age: 40 years, Occ: Agriculture,
R/o: Hebbal, Tq: Navalgund,
Dist: Dharwad and another.

(By Sri. V.T.K., Advocate)

Defendants :1. Smt. Devakka
W/o. Bheemaraddi Honnaraddi
Age: 65 years, Occ: Agriculture,
R/o: Hebbal, Tq: Navalgund,
Dist: Dharwad and others.

(D1 By Sri. P.B.P., Advocate)

(D3 By Sri. D.V.B., Advocate)

PARTIES TO I.A.

Applicant : 1. Sri. Nagaraj
(Original Plff no.1) S/o. Bheemaraddi Honnaraddi

Versus

Opponents : 1. Smt. Devakka
(Original defnds) W/o. Bheemaraddi Honnaraddi

**ORDERS ON I.A., FILED UNDER ORDER XXXIX
RULE 1 & 2 OF CPC**

The plaintiffs have filed the present suit seeking for a decree of perpetual injunction restraining defendants from interfering in the plaintiffs action of laying irrigation water pipeline for supply of water from Survey No.108/1 to Survey

No.101/1+2+3/A through the suit property by digging a ditch measuring 5 feet depth.

2. The plaintiff has sought an order of temporary injunction of similar nature by filing I.A. In the affidavit accompanying the I.A., the plaintiffs have contended that the plaintiff no.1 is owner and in possession of land bearing Survey no.108/1 to an extent of 3 acre 9 gunta at Hebbal village. The plaintiff no.2 is the owner of land bearing Survey no.101/1+2+3/A measuring 6 acre 20 gunta. The lands bearing Survey No.107/1 and 101/4 jointly stand in the name of plaintiff no.1 and defendants and they are the suit properties in this suit.

3. It is the contention of plaintiff that in order to cultivate the land exclusively belonging to plaintiff no.2 i.e., Survey No.101/1+2+3/A, the plaintiffs are desirous of laying the pipeline from land bearing Survey No.108/1 connecting to the ಪಲ್ಲೆ on the land of plaintiff no.1 and to draw water to the land of plaintiff no.2. For the said purpose the plaintiffs are desirous of laying a pipeline through the suit property i.e., Survey No.107/1 and 104/1, which jointly stands in the name of plaintiff no.1 and defendants, by digging a ditch measuring 5 feet depth and to lay such pipeline. However, despite attempts made by the plaintiffs to lay such pipeline, it could not be fruitful.

4. The consent from the authorities of KPTCL has been obtained. However, on account of obstructions by the defendants on 20.04.2022, the plaintiff no.1 made an application before Tahashildar, Navalgund on 26.04.2022 seeking his permission to lay such pipeline on suit property. The said application has been disposed by Tahashildar, Navalgund through order dated 19.05.2022 stating that the said property also stands in the

name of plaintiff. As such there is no need to grant such permission. It is contended that the suit property stands in the name of Bheemaraddi Honnaraddi and on his demise the plaintiff no.1 and defendants have succeeded to it. A suit was filed seeking a decree of partition which came to be decreed and in order to effect partition a final decree petition in F.D.P. No.21/2014 is pending consideration. It is contended that if the order of temporary injunction as prayed for is granted then no prejudice or hardship will be caused to the defendants. On the contrary, severe prejudice and hardship will be caused to the plaintiff. Hence, it is prayed for allowing the application and grant of temporary injunction.

5. The defendants have filed written statement and they have also filed memo adopting written statement as objections to pending application. Although defendants no.1 and 3 have filed separate written statement and defendant no.2 has filed written statement independently, the sum and substance of the contentions raised in both the said written statement is similar. It is contended that the suit property has not been completely partitioned and therefore the share of each of the members of the family is not ascertained by meets and bounds. The appeal bearing R.F.A. No.100273/2020 is filed by defendant no.3 before the Hon'ble High Court of Karnataka against plaintiff no.1 and defendants no.1 and 2 challenging the preliminary decree. Unless a final decree is passed, the plaintiff cannot lay his hand on any specific share of the suit property either to lay pipeline or to enjoy the same. Hence, it is contended that the suit property is jointly possessed and enjoyed by all the parties to this suit. Therefore, the relief of prohibitory injunction as sought by the

plaintiff is contended to be impermissible in the eye of law. It is also pleaded that defendants have cultivated crop on the portion of the property which is marked with red color in the rough sketch appended to the plaint. Hence, if the permission is grant as sought then severe prejudice will be caused to them. On these grounds the defendants have opposed the application and prayed for its rejection.

6. Heard both sides and perused the plaint pleadings, I.A., and the contents of the affidavit, the following points arise for my consideration which are as under;

POINTS

1. Whether the plaintiff/applicant has made out prima facie case for the grant of temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff/applicant?
3. Whether the plaintiff will be put to irreparable loss or injury, if an order of temporary injunction is not granted?
4. What Order?

7. My findings on the above said Points are as hereunder:-

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

Point No.2 : In the **Affirmative**,

Point No.3 : In the **Affirmative**,

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

REASONS

8. **Point No.1 to 3:-** These points are interlinked with each other, to avoid repetition of facts they have been taken together for common discussion.

9. The case of the plaintiff and defence put forth by the defendants has been set out in great detail at the commencement of this order. It suffices to mention that the property belonging to plaintiff no.1 i.e., Survey No.108/1 is situated on Western side of suit property whereas the property of plaintiff no.2 i.e., Survey No.101/1+2+3/A is situated on Eastern side. The grievance of the plaintiff is with reference to carrying the water from Survey No.108/1 to Survey No.101/1+2+3/A through suit properties. In order to make out prima facie case the plaintiff has to establish his prima facie right in connection with the suit property.

10. It is germane to mention that the right of the plaintiff no.1 in the suit property i.e., Survey No.104/1 and 107/1 is not in dispute as the defendants have referred to the pendency of appeal bearing R.F.A. No.100273/2020 which has been instituted by defendant no.3 of this suit as appellant before the Hon'ble High Court of Karnataka, Bench at Dharwad. The contentions raised in para no.4 especially at page no.4 of the written statement filed by defendants no.1 and 3, which is similar to written statement filed by defendant no.2, indicates that the said appeal has been preferred challenging the finding rendered by the trial Court in O.S. No.425/2015 holding that Survey No.108/1 and Survey No.101/1+2+3/A, i.e., the suit property of this suit, are exclusive properties of plaintiff no.1. Challenging such finding and being aggrieved only to that extent the judgment passed by the trial Court, the defendant no.2 has filed the first appeal as mentioned above. It is the contention of all the defendants that even those properties i.e., Survey No.108/1 and Survey No.101/1+2+3/A also belongs to the

defendants of this suit and that they have a right of share in the said property.

11. The nature of contentions raised by the defendants undoubtedly indicate that the right of plaintiff no.1 in relation to Survey No.108/1, Survey No.107/1, 104/1 and Survey No.104/1+2+3/A is not in dispute. But those defendants contend that the said plaintiff no.1 has right in all those properties along with the defendants. It is their contentions that unless a final decree is drawn allotting specific share of property to each member of the family, the plaintiff cannot lay his hand on specific portion of the land to draw pipeline from Western portion of the suit property towards Eastern portion on the Southern boundary of it.

12. It is relevant to point out that **Section 90-A of Karnataka Land Revenue Act, 1964** as contained in **Chapter-VII-A** relating to construction of water course through land of another provides for a right to a person for construction of pipeline from a water course located on the land of another for the purpose of drawing water from a source of water to do agricultural operations. The said provision provides for entering into a private agreement between the owner of a property and the owner of adjoining land through which pipeline is sought to be drawn. It provides for a remedy if no such agreement is arrived between such parties then the person desirous of obtaining water may make an application before Tahashildar and the Tahashildar shall make an inquiry as provided therein so as to pass suitable orders subject to conditions mentioned therein. Section 90-A(2)(b) also specifies that where the water course

consists of pipes, the pipes shall be laid at a depth of not less than 2 feet from the surface of the land.

13. The purpose, intent and object behind the said amendment in Karnataka Land Revenue Act, which was brought into effect from 10.05.1986, is to enable a farmer to carry agricultural operations on agricultural land so as to enhance its productivity by using adequate water drawing it from water source although it passes through the land of “another person”. The phrase “Another person” used in Section 90-A of Karnataka Land Revenue Act, indicates an independent owner of separate property. In the present case, as rightly held by Tahashildar, Navalgund, all the 4 survey numbers as discussed above also belong to plaintiff no.1. There is no dispute by any of the defendants about the plaintiff no.1 having right in all the 4 survey numbers. However, their contentions is about those defendants having a right of share in Survey No.108/1 and 101/1+2+3/A. Such contention has not been accepted by the trial Court in O.S. No.425/2015 against which an appeal is pending consideration.

14. It is significant to mention that the suit properties in the present suit are not subject matter of appeal in R.F.A. No.100273/2020. That is to say, there is no dispute about the plaintiff no.1 having right in Survey No.104/1 and Survey No.107/1 and there is no adjudication involved in R.F.A. No.100273/2020 in connection with the said properties, which are suit properties in this suit, about the right of plaintiff no.1. On the contrary, the subject matter involved in R.F.A. No.100273/2020 relates to the rights of defendants in Survey No.108/1 and Survey No.101/1+2+3/A which are not subject

matter of this suit. The plaintiffs of this suit have sought injunction restraining the defendants in causing obstruction for the plaintiffs to draw water from its source located in Survey No.108/1 so as to use it for carrying agricultural operations in Survey No.101/1+2+3/A. Therefore, the plaintiffs of this suit are not drawing pipeline through the land of “another person”, rather they are drawing pipeline through the suit properties in which admittedly the plaintiff no.1 has right of share.

15. It is also significant to mention that plaintiff no.2 being son of plaintiff no.1 is also entitled for a share in the present suit properties as those properties are ancestral properties in the hands of plaintiff no.1. Hence, there is no need for Tahashildar, Navalgund to exercise his jurisdiction under Section 90-A of Karnataka Land Revenue Act as the dispute conceived under the said provision must relates to the owner of one property and “another person”, who is the owner of some other property.

16. The learned counsel for the defendant has relied upon the decision of Hon'ble High Court of Punjab and Haryana in case of **Tarsem Singh (Deceased) Through His LR's Vs. Major Singh (Deceased) Through His LR's and others** decided on 25.07.2022 in **R.S.A. No.5381/2019** to contend that a joint owner of a property cannot prevent another joint owner by an injunction by using portion of joint property unless such prohibition amounts to wastage or destruction or injury to the co-owner. Referring to this judgment it is contended that the suit property in this case is in the joint ownership of plaintiff no.1 and defendants and therefore the order of injunction cannot be obtained by the plaintiffs.

17. It is germane to mention that the said decision is of much assistance to the case of plaintiff than the case of defendants. Admittedly the plaintiff no.1 also has a right of share in the suit properties. Hence, the plaintiff no.1 cannot be prevented from using Southern portion of suit property for laying pipeline by other defendants, who are admittedly joint owners with the plaintiff. If the plaintiff is prohibited from using Southern portion of suit property then it would certainly cause injury to him leading in wastage of water that may be used for carrying agricultural operations on Survey No.101/1+2+3/A which is drawn from water source located on Survey No.108/1. Such refusal to the plaintiff would certainly hamper agricultural activities on Survey No.101/1+2+3/A which cannot be compensated in terms of money.

18. On the contrary, the nature of injunction sought by the plaintiff is not in nature of prohibiting defendants in carrying agricultural operations on suit property. The order of injunction sought is limited only prohibiting defendants from causing obstructions to the plaintiff in laying pipeline on the suit property as shown in the plaint rough sketch. Hence, as rightly pointed out by learned counsel for the defendants, the plaintiff cannot be restrained by the defendants in enjoying the property in which he also has a right. As such the arguments of learned counsel for defendant is more helpful to the case of plaintiff than to the case of defendants.

19. In the light of discussion made above, looking to the peculiar facts and circumstances of this case, this Court is of the considered view that the plaintiff no.1 has right in all the 4 survey numbers as described above. As such prima facie case is

made out by the plaintiffs. If the plaintiffs are not provided with an opportunity to draw water through pipeline as proposed by them from Survey No.108/1 to Survey No.101/1+2+3/A then it would certainly hamper agricultural activity on the land bearing Survey No.101/1+2+3/A. As discussed by me above, the object of amendment brought to Karnataka Land Revenue Act by incorporating Chapter-VII-A in the year 1986 is to enable agriculturists to carry agricultural activities effectively so as to enhance productivity. If the proposal of plaintiffs to lay pipeline through the suit property is not considered and if such proposal is rejected accepting the hyper technical approach of defendants by agreeing to their contentions, about no specific piece of land being allotted to the share of plaintiff no.1 in F.D.P. No.21/2014, then it would certainly hamper not only the agricultural activities that may be carried out in Survey No.101/1+2+3/A but it also infringes the rights of plaintiff no.1 in the suit property which he has in accordance with law as admitted by all the defendants.

20. If the defendants are not prohibited from causing interference in the plaintiffs activity of laying pipeline on the suit property then severe prejudice and untold hardship will be caused to the plaintiffs. On the contrary, if the plaintiff is permitted to lay pipeline through the suit property by digging a ditch through the suit property measuring of about 2 feet width and 5 feet depth on the extreme Southern portion of the suit property with a direction for the plaintiffs to provide one opening each in Survey No.107/1 and Survey No.104/1 then that would certainly meet the ends of justice as the defendants, who are admittedly in possession of the suit property, will also have the

advantage of having access to the water for carrying agricultural operations on those suit properties also. Issuing such an order to plaintiff enabling him to draw pipeline with direction to him to provide two openings on the surface in both the lands as discussed above, this Court is of the considered view that, the balance of convenience would be fairly met and and the very purpose and object of bringing amendment to Karnataka Land Revenue Act would be satisfied so far as suit properties are concerned. Therefore, this Court deems it appropriate to grant order of temporary injunction with conditions as narrated below. In view of the above discussion I answer points no.1 to 3 in the **affirmative**.

21. **Point No.4:-** For the reasons discussed above, I proceed to pass the following;

ORDER

The application filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., is hereby **ALLOWED** subject to following conditions:

1. The plaintiffs are permitted to lay pipeline from Survey No.108/1 to Survey No.101/1+2+3/A through the extreme Southern portion of Survey No.107/1 and pass through Survey No.104/1 so as to draw water from its source located in Survey No.108/1 to be used in Survey No.101/1+2+3/A as mentioned in the plaint rough sketch.

2. In doing so the plaintiffs shall dig ditch from Survey No.108/1 to Survey No.101/1+2+3/A through the suit property as mentioned above measuring width of 2 feet and depth of 5 feet.

3. After laying pipeline through the suit property the plaintiffs are directed to fill up the ditch so dug on the suit property completely and to restore the area used for laying pipeline fit for carrying agricultural operations.

4. The plaintiffs are also directed to provide 2 openings from pipeline so drawn through the suit property each of which shall be located in Survey No.108/1 and Survey No.104/1, as described in the plaint rough sketch, for the purpose of enabling defendants to use water for the purpose of carrying agricultural operations on those properties.

5. The defendants no.1 to 3 are restraining by an order of temporary injunction from causing obstructions to the plaintiffs in carrying the above mentioned activities and they shall not obstruct plaintiffs from drawing water through the pipeline from Survey No.108/1 to Survey No.101/1+2+3/A in any manner till disposal of the suit.

6. Since there is no dispute about the right of share of plaintiff no.1 with respect to the suit properties, during the final decree proceedings in F.D.P. No.21/2014, the plaintiff no.1 of this suit shall seek allotment of share to him in the extreme Southern portion in Survey No.107/1 and Survey No.104/1, which includes the area through which the pipeline is so drawn by the plaintiffs under the present order.

7. The plaintiff no.1 is directed to file an affidavit of undertaking to comply with the present order on the next date of hearing and he shall also file another affidavit after laying the pipeline in accordance with this order with respect to such compliance.

For compliance by plaintiff no.1, call on 23.06.2023.

(Dictated to the stenographer, transcribed and typed by him, the transcript revised, corrected and then pronounced by me in the Open Court on this **12.06.2023**).

(Santhosh M.S.)
Civil Judge and J.M.F.C.,
Navalgund.
