

**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
JMFC., AT PANDAVAPURA**

DATED ON THIS THE 26th day of November 2021

:PRESENT:

**Smt. YASHASHWINI AMEEN B, M.A., L.L.M.,
II ADDL. Civil Judge & JMFC.,
PANDAVAPURA**

ORIGINAL SUIT NO.30/2021

Plaintiffs :

1. Mayigowda s/o late
Siddegowda, aged 64 years,
2. Papanna s/o late Siddegowda,
aged 62 years,
3. Manu s/o late Shamboogowda,
aged 35 years,
P-1 to 3 are residents of
Chikkade village, Kasaba
hobli, Pandavapura taluk,
4. K.M.Mahalingegowda s/o late
Madegowda, aged 49 years,
r/at Kalenahalli village,
Melukote hobli, Pandavapura
taluk,

(by Sri. MSP, Adv.,)

v/s

Defendants :

1. Panchayath Development
officer, (PDO), Chikkade
village Panchayath,
Chikkade village, Kasaba
hobli, Pandavapura taluk,

2. Executive officer (EO)
office of the Executive officer
Pandavapura town,
Pandavapura

(By Sri. BTN, Adv.,)

I.A.No.II

Applicants : Mayigowda and others
----- Plaintiffs

v/s

Opponents : PDO and another... defendants

:ORDERS

1. The plaintiff has filed I.A.No.II under Order 39 Rule 1 & 2 r/w sec.151 CPC seeking interim injunction restraining defendants from obstructing the plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. Brief facts of the plaintiff case is
that : In the affidavit annexed to the application, it is stated that the suit schedule property is the ancestral property of the plaintiffs. They are in

peaceful possession and enjoyment over the suit schedule property. But recently defendants in order to construct the road in the suit schedule property without issuing the notification of Land Acquisition illegally they are trying to construct the road in suit schedule property. If the defendants are succeeds in their attempts, then plaintiffs will be put to irreparable loss. Further plaintiff has stated that, they are having prima facie case against the defendants. Hence, they filed this suit along with the application.

3. Per contra, the defendants have appeared before the court and they have filed objection by stating that the written statement filed by the defendants may be considered as objection to I.A.No.II.

4. The gist of the objection filed by the defendants is as follows: The defendants have denied the averments made in the plaint as well

as in the application. They have specifically stated that, the suit schedule property is adjacent to the Mandya-Pandavapura main road. The villagers of Chikkade village have filed an application before District Commissioner of Mandya with a prayer to construct road from Milk dairy at Chikkade Grama Panchayath to Mandya-Pandavapura main road. Accordingly the DC and CEO visited spot and identified 02.08 guntas in Sy.No.5/1A for the road construction. Accordingly as per the land acquisition notification the tenders also accepted but plaintiffs have filed writ petition before Hon'ble High court of Karnataka in Writ Petition 7237/2004. In the said appeal, the Hon'ble High court of Karnataka has set-aside the land acquisition notification and ordered to conduct fresh land acquisition notification.

5. Further it is stated that, the defendant No.1 as per the order of the Hon'ble High court of Karnataka has filed requisition before Deputy Commissioner for fresh land acquisition proceeding along with the sketch. But after the Grama Panchayath election in the year 2020, the plaintiffs along with their staff on 12.1.2021 around 5:30 p.m. has caused damage to the public road and drainage. In this regard, the defendants have given complaint before the Pandavapura police on 15.1.2021. Further they have stated that, due to the political influence the plaintiffs are causing damage to the public road and also they are not allowing construct the road for which is used for large public. Hence, they prays to dismiss the application.

6. Heard the argument canvassed by the learned counsels for the plaintiffs. Even after giving sufficient opportunity, defendants have not

canvassed their arguments, hence, arguments by defendants taken as not addressed. Perused entire materials on record.

7. On careful examination of contention of both sides and materials on record, the following points arise for consideration of this court:

Point No 1: Whether the plaintiffs have made out prima facie case in their favour?

Point No 2: Whether the balance of convenience lies in favour of plaintiffs?

Point No 3: Whether the plaintiffs will be put to irreparable loss and injury, if an order of temporary injunction is not granted?

Point No 4: What order?

8. The above points are answered as follows:

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

9. POINT NO.1 :- Plaintiffs are claiming to be the owner and in possession of the suit property. The defendants without following the procedure they are trying to construct road in the suit schedule property. Hence, they have filed this application. On the other hand, defendants have contended that, they have issued land acquisition notification for construction of the road, the same was challenged by the plaintiff before the Hon'ble High court of Karnataka. The Hon'ble High court of Karnataka has set-aside the said land acquisition notification and directed the defendants to initiate acquisition proceedings afresh notifying the petitioners land. Further it is stated that, they have not yet issued land acquisition notification. The defendant No.2 has send requisition before Deputy Commissioner, Mandya with a survey report to initiate fresh land

acquisition proceedings. Hence, they pray to dismiss the application.

10. The plaintiffs in support of their case have produced RTC of suit schedule property. On perusal of the said RTC, column No.9 reflects that, plaintiffs are owner in possession of the suit schedule property. Further plaintiffs have filed order in **WP No.7237 of 2004 by Hon'ble High court of Karnataka.** On perusal of the said order it is noticed that, the Hon'ble High court of Karnataka held that,

“when once the name of the petitioners do not find place in the preliminary notification, their property cannot be notified under final notification. Therefore, this court is of the opinion that, the procedure followed by the Land Acquisition Officer as bad in law. In the result, the writ petition is allowed, Annexure-E dated 14.5.2004 is hereby quashed. It is open for the respondents to

initiate acquisition proceedings afresh notifying the petitioners land, if really the same is required for the public purpose.”

On perusal of the said order, it clearly establishes, that the Hon’ble High court of Karnataka has directed the defendants to initiate acquisition proceedings afresh notifying the plaintiffs.”

11. Further the plaintiffs have filed application filed under Right to Information Act before PDO, Chikkade Grama Panchayath on 15.1.2021 and requested to issue the documents in respect to the construction of the road in the suit schedule property. The same was served to the defendants. But there is no documents to show that, whether the defendants have issued the documents or not.

12. Further plaintiffs have filed 4 photos in respect to the suit schedule property. On perusal

of the said photos, it is noticed that, the property as shown in the photos are very adjacent to the road. Even though plaintiffs have contended that, the defendants are trying to construct the road in the suit schedule property in illegal manner, but in order to show this fact, they have not produced any documents.

13. Further the defendants have clearly stated in the objection that, as per the direction of the Hon'ble High court of Karnataka in WP No.7237 of 2004 defendant No.1 has filed requisition before Deputy Commissioner to conduct fresh land acquisition proceedings and they have not issued any land acquisition notification.

14. It is admitted fact that, the suit is for bare injunction and the instant application is for temporary injunction. Even though property is stands in the name of plaintiff but as per the

plaint and also the document produced by the plaintiff which clearly establishes that, the defendants are planning to construct road for the use of large public. Even Hon'ble High court of Karnataka has clearly directed the respondents to conduct fresh land acquisition proceedings. Hence, at this stage, if the injunction is granted against the defendants then the interest of large public will be defeated. Further the plaintiffs have not produced any documents to show that, the defendants are trying to construct the road in the suit schedule property without any proper land acquisition notification nor shown that defendants have constructed road in the suit schedule property.

15. The defendants have clearly stated that, they have not yet issued land acquisition notification they have only submitted requisition to conduct fresh land acquisition proceedings

before Deputy Commissioner. Further they have stated that, plaintiffs have illegally damaged the road which was used for large public. With a political grudge plaintiffs have filed this false case. In this regard, in **ILR 1992 KAR 2905, the Hon'ble High Court of Karnataka**, it is held that,

“The principle regarding granting or refusal of an injunction are well settled now. It cannot be disputed that in order to entitle to a temporary injunction, the plaintiff must have a clear prima facie case. Where there is doubt about the case of the plaintiff or when the case of the plaintiff is not clear, this extraordinary relief of temporary injunction cannot be granted to him”.

Hence, keeping in mind, above principles laid down by Hon'ble High Court of Karnataka and In view of the above discussion, this Court is of the view that, the plaintiff has not made out prima

facie case for grant of injunction. **Hence, I proceed to answer point No.1 in the negative.**

16. POINT NO. 2 & 3 :- These Points are taken together for discussion in order avoid repetition of facts. Now it has to be seen whether the balance of convenience is lies in favour of the plaintiff and irreparable loss and injury would be caused to him if an order of temporary injunction is not granted.

17. In view of findings on point no.1 the plaintiffs have failed to prove a prima faice case. Where a party has failed to prove a prima facie case, injunction cannot be granted even if such party makes out case of balance of convenience and irreparable injury. It is so held by their Lordships in a decision reported in **AIR 2010 SC 296, between Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy.**

18. Viewed from any angle the balance of convenience does not lean in favour of plaintiffs. When there is no prima facie case, question of considering the balance of convenience and irreparable loss and injury that would be caused to the plaintiffs if temporary injunction is refused does not arise. Therefore, considering all these aspects, this court is of the considered view that, if the injunction is refused no irreparable loss and injury would be caused to the plaintiff.

19. The plaintiffs have not made out prima facie case for grant of temporary injunction and balance of convenience does not lies in their favour and no injury will be caused to the plaintiffs if the application is rejected. Hence, **I answer the point No. 2 & 3 in the Negative.**

20. POINT NO.4: In view of my findings and discussions to the above points, this court proceed to pass the following:

:: O R D E R ::

**The IA No.II filed by the
plaintiffs under Order 39 Rule
1 & 2 r/w/s.151 CPC hereby
rejected.**

No order as to cost.

*(Dictated to the Stenographer, transcribed by him, corrected,
then pronounced by me in the Open Court on this the 26th day
of November 2021)*

**(YASHASHWINI AMEEN B)
II Addl. Civil Judge & JMFC.,
Pandavapura.**

Order pronounced in the open
court vide separate order

:: O R D E R ::

**The IA No.II filed by the plaintiffs
under Order 39 Rule 1 & 2 r/w/s.151
CPC hereby rejected.**

No order as to cost.

**II Addl. Civil Judge & JMFC.,
Pandavapura.**