

KAMS410016072024



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR**

PRESENT

Sri. Chandan S, B.Com., LL.B

Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 03RD DAY OF JANUARY 2026

O.S. No.441/2024

Plaintiff :

1. Sri. Doddegowda S/o Late Ujjanigowda,
Aged about 42 years,
R/at Hangaramuddanahally,
Akkihebbalu Hobli, K.R.Pet Taluk,
Mandya District.
2. Sri. Ravikumar S/o Javaregowda,
Aged about 40 years,
R/at Doddahally, Hally Musuru Hobli,
Holenarasipura Taluk,
Hassan District.

(Rep. By Sri. C.L.M., Advocate)

V/s

Defendants:

1. Chief Executive Officer,
Zilla Panchayath, Mysuru District.
Mysuru – 570005.
2. Executive Engineer,
Rural Drinking Water and
Sanitation Department,
Sub-division Office, Mysuru.
3. Assistant Executive Engineer,

Rural Drinking water and
Sanitation Department,
K.R.Nagar.

4. Panchayath Development Officer,
Doddekoppalu Grama Panchayath,
K.R.Nagar Taluk, Mysuru District.

5. Sri. Jagadeesh S/o Ramegowda
R/at Dammanahally,
Koppalu Village, Saligrama Taluk,
Mysuru District.

(D1 to 3 & 5 Ex-parte)
(D4 By Sri. G.L.D., Advocate)

ORDERS ON PRELIMINARY ISSUE NO.3

This Court has framed issue No.3 on 28.10.2025 and treated the Issue No.3 as Preliminary Issue. Issue No.3 is as under;

1. Whether the suit is not maintainable for want of proper cause of action as contended in the para No.9 of the written statement?

2. This is the suit filed by the plaintiffs against the defendants for the relief of perpetual and permanent injunction to abstain, prevent, prohibit and restrain them from causing, erecting, creating, laying and putting up any water tank towards the eastern side of the plaint 'A' and 'B' schedule properties.

3. Further according to the plaintiffs, one Smt. Jayanthi and Sri.Mallegowda jointly purchased the land bearing

Sy.No.64/4 measuring 10 guntas of land situated at Kalenahalli Village, Kasaba Hobli, K.R.Nagar from Dinesha and others under the deed and instrument of sale dated 10.11.2022 for its valuable consideration. Further in accordance with the said sale, in pursuant of the said sale transaction and in conformity with the said sale proceeds, the purchasers transferred, implemented, enforced, effectuated and mutated the khata and other revenue records into their names and they are holding and conferred with peaceful pleasant, blissful, serene, tranquil and lawful possession of the suit schedule property. Further in a partition which was made, entered, acted and effectuated among the family members through the instrument of partition dated 03.11.2023, schedule 'A' property has been allocated, fallen and it is assigned to the share of plaintiff No.1 and schedule 'B' property has also conceded, left and designated and bifurcated in favour of the plaintiff No.2.

4. Further pursuant to the said proceeds of partition, as per the division, segmentation, classification, sector, section, branch and bifurcation, the respective sharers have mutated the documents as per the partition and the plaintiffs are in peaceful possession and enjoyment of the respective properties fallen to their shares. Further it is submitted that, the defendant No.5 all of a sudden, without any instruction, intimation and in concurrence permission of the plaintiffs,

they are attempting and also they are initiating to construct, erect and build a massive, huge, heavy, cimmerician, gallant water tank in front of the eastern side of the plaint 'A' and 'B' schedule property.

5. Further the said act, conduct and also the procedure in laying, installing, building and erecting the water tank is in complete derogation adverse against and quit contrary to the norms guidelines, rules, regulations and without complying and following the safety elements in a manner endangering human life and causing hardship, impairment, fordo, defloration, hindrance, flab and causing irreparable loss and injury without protecting the safety and the interest of the plaintiffs herein they are undertaken to erect and construct the said water tank.

6. Further in the event if the defendants construct and build the intended water tank it will cause greater hindrance and hardship. Although the plaintiffs requested the defendants not to build, construct, install and erect the said water tank, the defendants without listening, consenting, obeying, adhering, fallowing and showing any regard, respects and honor to the interest of the plaintiffs, they are infringing, violating and also depriving the very fundamental right of the plaintiffs without further proceed to construct and put up said water tank flouting away without heeding the

prayer plea and repeated demand and prayer of the plaintiffs. Therefore according to the plaintiffs, they have approached this court without any recourse available to them and to prevent the acts of unlawful and illegal activities and functionaries of the defendants.

7. Upon considering the facts and circumstances of the case, it is the specific contention of the plaintiffs that, they are the absolute owners of the properties described in Schedule-A and Schedule-B. They claim to have acquired the said properties under a registered deed of partition dated 03-11-2023, entered into among the plaintiff's family members. Under the said partition, Schedule-A property was allotted in favour of Plaintiff No.1, and Schedule-B property was allotted in favour of Plaintiff No.2.

8. The plaintiffs further aver that, the defendants, without safeguarding the rights, interest, and safety of the plaintiffs, have attempted to erect a multi-use, large-capacity water tank towards the eastern side of the suit property. According to the plaintiffs, such proposed construction, if permitted, will result in loss of safety, infringement of their property rights, and cause irreparable injury, hardship, and permanent damage affecting their peaceful possession.

9. The plaintiffs contend that, sufficient Government land is available for the defendants to put up the water tank, and

even if it is to be constructed, it must be done leaving a minimum setback of 8 to 10 feet from the plaintiff's property. They further submit that, if the defendants are allowed to erect a compound wall and undertake construction within or adjacent to the plaintiffs' property limits, it will have severe repercussions on their lifestyle, convenience, safety, and enjoyment of the suit property.

10. According to the plaintiffs, the cause of action first arose on 13-08-2024 when the defendants refused to heed the plaintiffs' request to stop the construction activities relating to the water tank, thereby compelling the plaintiffs to file the present suit. It is a well-settled proposition of law that, while deciding the issue regarding cause of action, the Court must consider only the averments made in the plaint, and not the defence set out in the written statement. The material facts pleaded in the plaint alone are relevant for determining whether a cause of action has been disclosed.

11. On a careful consideration of the plaint averments, it is evident that the plaintiffs have asserted that the defendants are attempting to construct a water tank and compound wall in close proximity to the suit properties, allegedly infringing their rights. Though the defendants contend that the work undertaken is part of a noble and sacrosanct government scheme to provide purified water to local citizens, such a

defence cannot be considered at this preliminary stage while examining the existence of cause of action. No public interest, however compelling, can justify the infringement of individual rights without due process.

12. The plaintiffs must still bear the burden of proving their case through evidence at trial. However, permitting them to lead evidence on the issues cannot be considered prejudicial to the defendants. The plaint, on its face, discloses the existence of material facts constituting a cause of action. There are prima facie pleadings and documents supporting the plaintiffs' contention that their rights over the suit properties are being threatened.

13. At this nascent and preliminary stage of the proceedings, it is neither proper nor legally permissible to reject the suit on the ground that no cause of action exists. The plaint, when read as a whole, clearly sets out a cause of action requiring adjudication. Therefore, the issue regarding cause of action, as raised in Paragraph 9 of the written statement, is not sustainable. Hence, the preliminary issue framed by this court is answered in the **Negative** and court proceeds to pass the following:

ORDER

Issue No.3 is answered in the Negative.

Accordingly, the suit is maintainable. List the matter for recording of evidence on the remaining issues.

(Dictated to the Stenographer transcribed by her, revised, corrected, signed and then pronounced by me in the open Court on this the 03rd day of January 2026)

(Chandan.S)
Prl. Civil Judge and JMFC,
K.R.Nagara.