

IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
KARKALA.

Present: Sri. Puttaraju, B.A.LL.B,
Prl. Civil Judge & J.M.F.C., Karkala.

Dated, this the 1st day of January, 2018.

ORIGINAL SUIT No.75/2017

Between:-

Mrs. Eliza D'Souza and another. .. Plaintiffs.

And

Mr. Balakrishna Shetty and others. .. Defendants.

PARTIES TO I.A.NO.III

1. Mrs. Eliza D'Souza,
aged about 75 years,
wife of late Vincent D'Souza,
Represented by her son and G.P.A.
Holder Mr. Edward D'Souza.

2. Mr. Edward D'Souza,
aged about 37 years,
son of late Vincent D'Souza
and Mrs. Eliza D'Souza.

Both are residing at Kurachebettu,
Kukkundoor Village, Karkala Taluk,
Udupi District. ..Applicants/plaintiffs.

(By Sri. N. Shivananda Nayak, Advocate.)

- AND -

1. Mr. Balakrishna Shetty,
aged about 44 years,
son of late Siriyanna Shetty,
residing at Anekyar,
Kukkundoor Village and Post,
Karkala Taluk, Udupi District.
2. Mr. Ramanath Nayak,
aged about 40 years,
son of Upendra Nayak,
residing at 5 Cents Colony,
Near Sri. Durgaparameshwari Temple,
Kukkundoor Village and Post,
Karkala Taluk, Udupi District.
3. Kukkundoor Grama Panchayath,
Represented by its Panchayath
Development Officer Sri. Sudhakar Shetty,
Kukkundoor Village and Post,
Karkala Taluk, Udupi District. ..Opponents/defendants.

(Deft. No.1 & 2 : By Sri. I. R. Ballal, Adv. ;
Deft. No.3 : By Sri. Shrihari Mugeraya, Adv.)

: ORDER ON I.A.NO.III :

The plaintiffs have filed I.A.No.III U/Or.39 Rules 1 and 2 read with section 151 of C.P.C. praying to grant an ad-interim order of injunction restraining the Opponents/Defendants or their men from trespassing and interfering with their peaceful possession of the plaint 'A' schedule properties and from digging and laying pipe lines in the said properties and from interfering with their peaceful

possession and enjoyment of the said properties till the disposal of the suit.

2. In the accompanying affidavit the 2nd plaintiff has averred that they are co-owners of the plaint 'A' schedule properties and the defendants have no manner of right or interest in the said properties. The 1st defendant started digging a well in his property in Sy. No. 63/2 of Kukkundoor Village with an intention to take water from the said well through pipeline. In the month of March 2017 the defendants colluded together and made an attempt to forcibly dig a trench through JCB in the plaint schedule properties with an intention to lay pipeline illegally and they resisted the illegal acts of the defendants. The 1st plaintiff and others have filed objections before the 3rd defendant and filed police complaint before S.H.O. Karkala. Though the S.H.O. Karkala directed the defendants to stop the illegal activities, they once again trespassed into the suit properties on 28-04-2017 and started to cut and remove valuable tree growth like Kiralbhogi, Karimar and other varieties of trees and started to dig with JCB on the eastern and southern sides of the suit properties in order to lay pipelines and to form new road by widening the footpath in the suit properties and caused damage to the extent of Rs. 50,000/-. The local police have failed to take any action against the defendants, in fact, they colluded with them. The suit schedule properties are to be protected and preserved from the

illegal acts of the defendants till disposal of this suit. Hence, prayed for allowing the application.

3. The defendants have filed objections to the application by denying the affidavit averments and contended that the plaintiffs have filed this suit only with an intention to block the ancient road existing in the suit schedule properties and to destroy the drinking water pipes existing in the said properties by obtaining an order of injunction. There has been in existence of an ancient mamool road called Jodurasthe-Ashwathapura and Patla road of the width of 16 feet in the suit schedule property which starts from Karkala-Udupi State Highway and passes through the suit schedule properties. There is no other road except the road passing through the suit schedule properties to reach the Patla locality. The 3rd defendant has been spending huge amount for maintenance of the said road which is vested with it and the plaintiffs have absolutely no right in the said road. There is paucity of drinking water in the locality. The 1st defendant considering the need for water has allowed the 3rd defendant to dig a well in his plot in Sy. No. 63/2 measuring 0.07 acre of Kukkundoor Village and accordingly the well has been dug and pump has also been installed to the said well. From the said well pipelines were laid till Patla locality by the side of the said road. The plaintiffs along with some persons of the locality have filed false police petitions. The Tahsildar, Karkala being the Executive Magistrate held enquiry and permitted the 3rd defendant to

lay pipeline by the side of the road. The 3rd defendant has already laid pipeline and has been supplying water to the general public through the said pipe line. The defendants will be put to great loss and hardship if an order of injunction is granted. Hence, prayed for dismissal of the application.

4. Heard both sides and perused the materials placed on record. The counsel for plaintiffs in support of his contention has produced the following citations.

1. 1989(2) KLJ 189

2. 2008(1) KCCR 98

5. On the rival contentions of the parties, following points arise for consideration:

1. Whether prima-facie case and balance of convenience lies in favour of the plaintiffs?
2. Whether the plaintiffs will be put to irreparable loss and injury if order of Temporary Injunction is not granted?
3. What Order?

6. Heard the arguments of both the counsel and perused the documents produced by both the parties.

7. The findings on the above points are as follows: -

Point No.1 :- In negative.

Point No.2 :- In negative.

Point No.3 :- As per final order, for
the following:

: R E A S O N S :

8. **Points No.1 and 2:-** Both these points are taken up together for discussion in order to avoid repetition of facts.

9. The plaintiffs have filed this suit for permanent injunction restraining the defendants and their men from trespassing and interfering and from digging and laying pipeline in the suit property. The case of the plaintiffs is that, they are co-owners of the suit schedule properties, the 1st defendant having no right therein started digging a well in his property in Sy. No. 63/2 of Kukkundoor Village to take water from the said well through pipeline and as such in the month of March 2017 the defendants tried to dig a trench by JCB in the suit properties to lay pipeline illegally and inspite of objections and complaint before the police, the defendants on 28-04-2017 trespassed into the suit properties and started to cut and remove valuable tree growth, started to dig with JCB on the eastern and southern sides of the suit properties to lay pipelines and to form new road by widening the footpath in the suit properties and caused damage to the extent of Rs. 50,000/-. Whereas the contention of the defendants is that there has been in existence of 16 feet width

ancient mamool road called Jodurasthe-Ashwathapura and Patla road in the suit schedule property which starts from Karkala-Udupi State Highway and passes through the suit schedule properties and this suit has been filed only with an intention to block the said road and to destroy the drinking water pipes existing therein by obtaining an order of injunction. When such being facts of the case, the court cannot conduct mini trial at this stage to decide the rival contention of the parties. It requires to be considered as to whether plaintiffs have made out prima facie case and the balance of convenience lies in their favour and also to be seen as to whether plaintiffs will be put to greater hardship if the application is rejected.

10. In support of their case the plaintiffs have placed on record the R.T.C. extracts of the suit schedule properties, copies of registered permanent lease deed, registered sale deed, copy of objection filed by the plaintiff before 3rd defendant, copy of the compliant and endorsement issued thereon. The advocate for the plaintiffs has also relied on the rulings reported in 1989(2) Kar. L.J. 189 and 2008(1)KCCR 98. At this stage by appreciating the documentary evidence in the light of the pleadings of the parties, the facts are required to be appreciated.

11. On careful perusal of rival contentions of the parties, the fact that, RTC extracts and release deed relied on by the plaintiffs prima facie reveal that the plaintiffs are owners in possession of suit

properties and mutation is entered in their names. Further the plaintiffs relied on the petitions filed by the villagers of Kukkundur before the Panchayath of Kukkundur and jurisdictional police. On perusal of same it appears that the villagers of Kukkundur have filed objection to lay the pipeline alleging that Panchayath laid the pipeline in their patta lands without their consent. It does not prima facie reveal that the 3rd defendant laid the pipeline by digging trench in the suit property itself. The photos relied on by the plaintiffs do not disclose the formation of road newly in the suit property and as rightly argued by the counsel for defendant No.3, it prima facie discloses that there was an old road and by its side trench was dug to lay the pipeline.

12. The contention of defendant No.3 is that the 1st defendant has donated his 0.07 acre land bearing Sy. No. 63/2 of Kukkundoor Village to it, wherein the well has been dug and pipeline was laid till Shri Durgaparameshwari Temple locality by the side of the road and the said work is completed as on the date of suit itself. Further it is contended that the trenches dug and pipe line laid by the side of said road for the purpose of supply of drinking water for needy people who are residing in the locality under the State Government Scheme. The said work is already completed as on the date of suit itself and when the work is completed against which the plaintiff sought for the relief of injunction, no purpose will be served.

13. The counsel for the plaintiffs argued that though the 3rd defendant has laid the pipe line for supply of drinking water by the side of said road, there may be chances of interference by them one or the other way in future. At this stage, if the injunction is granted, they will not interfere with the possession of the plaintiffs in respect of the suit property.

14. From the argument canvassed by the counsel for the parties prima facie it would reveal that work of laying pipeline is completed as on the date of suit itself. When such being the facts of case, at this stage it is to be seen as to whether prima facie case includes to go for trial, if so, the plaintiffs have established that they have made out a prima facie case to go for trial. In this regard at this stage it would helpful to rely on the case of Kashi Math v/s Shrimad Sudindra Thirtha Swamy, wherein Hon'ble Apex court held that:

“ It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prima facie to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned

would not be material at all, that is to say, if that party fails to prove the prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.”

15. Therefore, in the backdrop of aforesaid settled position of law, on perusal of the documents placed on record by the plaintiffs, it appears that, those documents would not made out prima facie of plaintiffs. When the plaintiffs have failed to establish prima facie case, the question of considering the balance of inconvenience and irreparable loss does not arise.

16. I have gone through the decisions relied on by the counsel for the plaintiffs in detail. On perusal of the same it appears that, those decisions are not applicable to the facts and circumstances of the case in hand. Therefore, in view of my observation above, I hold that the plaintiffs have not made out prima facie case and the balance of convenience does not lie in their favour. As such, the plaintiffs are not entitled for the relief of injunction against the defendants. Accordingly I answer Points No.1 and 2 in the negative.

17. Point No.3:- In view of my above observation on points No. 1 and 2, I proceed to pass the following:

ORDER

IA.No.III filed by the plaintiffs
under Order 39 rules 1 and 2 and Section
151 of C.P.C. is hereby rejected.

(Typed to my dictation by the Stenographer directly on the
computer, corrected by me and then pronounced in the open court
on this 1st day of January, 2018)

(Puttaraju)

Prl. Civil Judge & J.M.F.C., Karkala.

