



**IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA.**

PRESENT:

Smt.Vidya A.S. B.A., LL.B.
II Addl. Civil Judge & J.M.F.C.,
Kundapura.

Dated this the 30th day of September, 2022.

Original Suit No.159/2022.

Plaintiffs:	<p>1. Udaya M., Aged about 41 years, S/o. Thimmappa Marakala, R/at: Mullugudde, Devasthanabettu Post, Beluru Village, Kundapura Taluk.</p> <p>2. Rudramma Shedthi, Aged about 63 years, W/o. Venkappa Shetty, R/at: Chamtadi, Naikaramane, Devasthanabettu Post, Beluru Village, Kundapura Taluk.</p> <p>3. Nagabharana Adiga, Aged about 49 years, S/o. Rajgopal Adiga, R/at: Chamtadi, Naikaramane, Devasthanabettu Post, Beluru Village, Kundapura Taluk.</p>
	<p>--And--</p>
Defendants:	<p>1. P.D.O, Beluru Gram Panchayath, Beluru, Kundapura Taluk.</p>

	2. Asst. Executive Engineer. MESCOM, Kundapura
	<u>Rank of the Parties On I.A. II</u>
Applicant/plaintiff:	Udaya M., (Rep. by Sri. M.S.A.-Advocate)
Opponents/defendants	P.D.O, Beluru Gram Panchayath and another (Rep. by Sri. M.J.S.-Advocate for defendant No.1 Rep. by Sri. T.M.P.-Advocate for defendant No.2)

ORDERS ON I.A. II

The plaintiffs along with suit filed IA No.II under Order XXXIX Rule 1 and 2 and under Section 94(e) R/w. 151 of CPC., for seeking the relief of temporary injunction infavour of the plaintiffs and thereby temporarily restraining the defendant No.1, their people, their servants, claiming under them form laying pipeline in the middle of the road below the earth after dig the middle road which was situated in suit 'A' schedule properties and also restraining the defendant No.2, their servants and agent and all persons claiming under them from drawing or laying any electrical wires or from fixing any electrical poles over and across any portion of suit 'A' schedule properties and thereby interfering with the possession and enjoyment of the schedule properties

including mud road by the plaintiffs in any manner till the disposal of the suit.

2. In the accompanying affidavit, the applicant stated that, the item No.1 of suit 'A' schedule property is absolutely belongs to plaintiff No.1 and he is absolute owner and in actual physical possession and enjoyment of the said item No.1 of suit property, the item No.2 of suit 'A' schedule property is belongs to plaintiff No.2 and she is absolute owner and in actual physical possession and enjoyment of the said item No.2 of suit property, the item No.3 of suit 'A' schedule property is belongs to plaintiff No.3 and he is absolute owner and in actual physical possession and enjoyment of the said property.

2.2. Further stated that, some of the politically backed peoples are made the evil eye over the suit 'A' schedule properties and small mud road. They are made the wicked idea for destroy the mud road which was regularly used by the plaintiffs and devotees of Kailari Temple. They are given the bad advice and pressure to local panchayath for farm the new water pipeline in middle of mud road which was lying pipeline in the middle of the road below the earth.

2.3. The local panchayath recently farm the new big well in private land without consent of said land owners and also started to dig the water channels which was laying the pipeline in the land below the earth. The said work was commenced in the Govt Land of hadi area and then they are intend to continue the said work in the middle of above said mud road. The panchayath under the bad advice of some of powerful persons in locality they are moved for the New Jalajeevan Mission Water Scheme after laying new pipeline in the middle of the road below the earth and also install the new electrical poles with transformer with draw the high tension live wire over the portion of suit 'A' schedule property for current connection. The defendants have an alternative route for the said purpose. It is necessary to restrain the defendants for do the said illegal acts, otherwise plaintiffs and other adjacent owners will cause irreparable loss and hardship, which cannot be compensated in terms of damages. With these averments the applicant has sought for allowing the application.

3. The defendants have filed written statement. The defendants have stated that the written statement may be treated as objection to the I.A.II.

4. The learned counsel appearing for the plaintiffs in support of his submission, he relied on the following decisions reported in **2022 (3) K.C.C.R page 2399**: Dr. Arun Kumar B.C. Vs. State of Karnataka and others. **ILR 1989 Karnataka page No.3363**: State of Karnataka Vs. Basalingappa, **2022 AIR (SC) page No.2073, (2022) AIR (SC) Civil page No-1463**: Kalyani (dead) through LR's and others Vs. The Sulthan Bathery Minicipality and others.

5. Heard both sides and perused the materials on record.

6. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the plaintiff has made out prima facie case?

Point No.2: Where does the balance of convenience lies?

Point No.3: Whether irreparable loss and injury would be caused to the plaintiff if an order of temporary injunction is not granted ?

Point No.4: What order ?

7. The findings of this Court on the above said points are as under:

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

8. Point No.1: On perusal of the case file, it is seen that the plaintiffs have filed suit against the defendants for seeking the relief of permanent injunction in respect of the suit schedule property.

9. The plaintiffs have averred that, the item No.1 of suit 'A' schedule property is belongs to the plaintiff No.1. The item No.2 of suit 'A' schedule properties are belongs to plaintiff No.2. The item No.3 of suit 'A' schedule properties are belongs to plaintiff No.3. They are absolute owners of the suit 'A' schedule properties.

10. Further pleaded that, the plaintiffs and their family members in adjacent land owners are farm the small road in middle western side of their patta properties for the purpose of transport the agricultural product and transport the machinery etc., for cultivate the paddy crops etc. in suit 'A' Schedule properties including properties in adjacent land owners, the said road is also farmed for give the road

connection to Sri. Kshetra Kailari Sri Bandara Ganapathi, Brahmalingeshwara, Nandikeshwara Saha Parivara Temple Kailari, Beluru Village, the said temple is situated in north western side of above said mud road, the said mud road is situated in patta properties of suit 'A' schedule properties including other adjacent patta properties. The said mud road is not a panchayath road or public road and the said road is the private road situated in patta properties, which was farmed from patta owners.

11. Further pleaded that, the local panchayath recently farm the new big well in private land without consent of above said land owners and also started to dig the water channel, which was laying the pipeline in the land below the earth, the said work was commenced in the government land of hadi area and then they are intend to continue the said work in the middle of above said mud road, the politically backed powerful persons and local panchayath is also give the pressure to 2nd defendant for draw the new high-tension live wire and also to install electrical pools with transformer over the portion of suit 'A' schedule property for the purpose of give the electric connection to well and water pipe line, the 1st defendant panchayath under the bad advice of some of powerful persons in locality, they are moved for introduce the

new Jalajeevan Mission Water Scheme in after laying new pipeline in the middle of the road below the earth and also install the new electrical poles with transformer with draw the new high-tension live wire over the portion of suit 'A' Schedule properties for give the current connection to said scheme.

12. Further pleaded that, the defendants have no right to farm the new water pipeline in middle of mud road which was laying pipeline in the middle of the road below the earth and electrical wire with poles over and across the suit 'A' schedule properties,

13. It is the specific contention of the defendant No.1 that, the Government of Karnataka under its scheme called Jal Jeevan Mission with an intention of providing drinking water to 56 families in and around locality called Champthadi of Beloor Village within the jurisdiction of Beloor Gram Panchayath has directed the Gram Panchayath to select a place within its jurisdiction to dug open well and to construct over head tank to draw and store the water and to supply the water, to above said 56 families/beneficiaries under the above said scheme of the government through pipe line and also to cooperate with concerned officers under the above said Jal

Jeevan Mission Yojana of the Government to dug well, construct over head tank, install pump set to said well, to assist with concerned officer in MESCOM to supply electricity to the said pump set, to form water supply pipe line in between the place where the above said water tank/well and the houses of beneficiaries etc. that being statutory body, the Gram Panchayath is duty bound to provide all necessary assistance to authority and officers so as to enable them to provide good drinking water to needy people in its area.

14. Further stated that, the Beloor Gram Panchayath has taken a unanimous decision to dug a open well and also construct over head tank under the above said Jal Jeevan Mission Yojana in a place called Champthadi which place was selected by concerned experts and accordingly they dug a well long back by spending heavy amount under the above scheme of the government. Thereafter near to said open well a over head tank was constructed by the authority by spending considerably huge amount under the scheme and electric pump set is also installed in the same place. That to provide power supply to said pump set electric wires are need to be drawn from the main line situated little away from said place by installing electric poles on the side of above said public road called Kailadi Ganapathi Temple to Champthadi

Road and this proposed electric line to be drawn is not high tension electric line.

15. Further stated that, the above said works under Jal Jeevan Mission Yojana was commenced long back and the Executive Engineer, Rural Drinking Water Supply & Sanitation Department Udipi District as per his order dated 28-11-2020 has directed the Beloor Gram Panchayath to provide all assistance to officers and authority concerned to get the above said works under the scheme done within the stipulated time.

16. Further stated that, the concerned works under the above said Jal Jeevan Mission Yojana has been undertaken by the Gram Panchayath and other officers and persons concerned to them since December 2020 and the major works under the scheme is already completed and if at all the remaining work is hampered or interfered with definitely the Government and its subordinate authorities will put to loss and hardship and further the above said poor and helpless beneficiaries under the scheme will put to great inconvenience and hardship.

17. This Court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. This Court has carefully perused the list of documents produced by the plaintiff. The list of documents of the plaintiff consists of RTC's pertaining to suit 'A' schedule properties, copy of objection, Photographs alongwith CD, certified copy of FMB Sketch, Rough eye sketch, copy of resolution dt:30-03-2022, copy of writ petition order, copy of order passed by the EO and other documents relating to said appeal. The list of documents of the defendant No.1 consists of the certificate copy of Resolution dt:30-12-2021, Official memorandum, Photographs, work order dt:26-02-2021, Running account Bill (C) dt:23-06-2021, Work order dt:21-01-2022.

18. In this case, the Executive Engineer, as per his order dt:28-11-2020 has directed the Beloor Gram Panchayath to provide all assistances for proposed work under the Jal Jeevan Mission Yojane. The plaintiffs have not preferred any appeal against that order. The order passed by the above said Executive Engineer attained finality and the same is required to be enforced. Such implementation

cannot be delayed any further. The Government has sanctioned funds for the proposed work under Jala Jeevan Mission. This court cannot restrain such facility by means of temporary injunction. If injunction is granted against the defendants hardship will be caused to the beneficiaries under the said scheme. This court has already pointed out the entire allegations made in the plaint. Therefore, the above decision relied by the counsel for plaintiffs does not support the case of the plaintiffs. This decision is not applicable to the present case on hand because facts and circumstances are altogether different. The hardship as pleaded by the plaintiffs will be considered at the later stage. At this stage this Court by considering the materials on record, is of the opinion that the plaintiffs have not made out prima facie case and they are not entitled for the equitable relief of temporary injunction. With these observations, this court answer point No.1 in the Negative.

19. Point No.2 and 3: In order to avoid repetition, I would like to discuss these points together, since they are interconnected to each other. In Gowrishankar Swamigalu Vs. Siddhaganga Mutt and others reported in ILR 1989 KAR 1701, the Hon'ble High Court of Karnataka has held that:

"The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little purpose of being accepted by the Court, further question of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself".

20. Since the plaintiffs have not made out prima facie case in their favour, the question of balance of convenience lying in their favour and irreparable injury may be caused to them requires no discussion at this stage. Therefore, the balance of convenience does not lies in favour of the plaintiffs. With these observations, this court answer Point No.2 and 3 in the Negative.

21. Point No.4: For the aforesaid discussion on point No.1 to 3, this Court proceeds to pass the following;

ORDER

I.A.No.II filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC is hereby rejected.

Exparte temporary injunction order dated 29-03-2022 is hereby vacated.

For compliance of Section 89 of CPC.

Call on:15-11-2022.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this **30th day of September, 2022**)

(Smt.Vidya A.S)
II Addl. Civil Judge & J.M.F.C.,
Kundapura.