

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,

AT: YADGIR

PRESENT: SHRI. MALLIKARJUNA R.M.,LL.M.

CIVIL JUDGE & JMFC, YADGIR

O.S. No. 62/2020

DATED 10th DAY OF SEPTEMBER, 2020

BETWEEN:

M.Krishnamurthy S/o Mallikarjunappa,
Age : About 47 Years, Occ : Agriculture,
R/o: Gurumitkal, Tq: Gurumitkal,
Dist: Yadgir. Plaintiff.
(By Shri.G.M.M, Advocate)

AND :

1. The State of Karnataka, represented by
The Deputy Commissioner, Yadgir, Dist: Yadgir.
2. The Cheif Engineer, KBJNL,
Canal Zone No.1, Bheemarayanagudi,
Tq: Shahapur, Dist: Yadgir.
3. The Executive Engineer, KBJNL Santhi L.I Diviosion,
Khanapur, Tq: Shahapur, Dist: Yadgir.
4. The Asst. Executive Engineer, (SLI Division, Khanapur),
NRBC Sub-Division, Dhornahalli, Tq: Shahapur, Dist: Yadgir.
5. The Managing Director, L & T Construction Company,
Larsen and Toubro Limited, L & T House, Ballard Estate,
Mumbai – 400001, State; Maharashtra.
6. Mutturaman S/o Chinnappa,
Age: 52 Years, Occ; Contract Work,
(Employee of L & T Construction Company),
R/o: Near Hosalli Cross Yadgir,
Tq: & Dist: Yadgir, Defendants.
(Def.No.1 to 4: Placed Exparte)
(Def. No. 5 & 6: R.C.S, Advocate)

: ORDER ON I.A-II :

1. The instant suit is to restrain the defendants from laying down water pipe and thereby interfering with the plaintiff's possession over the suit property.

2. The plaintiff has filed the instant application under Order 39 Rule 1 and 2 of C.P.C seeking an order of temporary injunction restraining the defendants from laying a pipe line and thereby interfering with the suit property till the disposal of the suit on the grounds that he is the owner of suit property having purchased same under sale deed dated 17.03.2006 and since then he is in peaceful possession and enjoyment of the same. The defendant No.1 to 4 being government instrumentalities are very much interested in laying pipe line for supply of water, through the suit land without there being any acquisition of land. They have engaged the defendant No.5 & 6 to carry out the work. Though plaintiff has requested not to progress with the work still the defendants have not bothered to stall. Thus the act of defendants is causing not only apprehension but also illegal interference in the suit land.

3. The defendant No.5 & 6 have filed their detailed written statement denying that the defendant No.1 to 4 without acquiring the suit land deployed defendant No.5 & 6 to carry out the pipe line work. They have admitted that they are employed by the defendant No.1 to 4 to lay down the pipeline under the scheme of Krishna Bhagya Jala Nigam Limited for filling up of 35 tanks in Yadgir district for which one and a half acres of suit land is going to be utilised. It is their case that an outer time limit of 18 months is granted to complete the work and if an order of injunction is granted it would cause serious injustice to them. On these grounds they sought to reject the IA.

4. Heard both the counsel on record. Perused the materials available.

5. After having heard the counsels at length, the points that arises for consideration are:

1. Whether the plaintiff has made out a prima facie case ?
2. Whether the balance of convenience lies in the favour of plaintiff for passing an order of injunction?
3. Whether the plaintiff will suffer irreparable injury if an order of temporary injunction would not be passed?
4. What order?

6. My findings to the above points as under:

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

7. Points No.1 to 3, :- Since the Point No. 1 to 3 are inter connected to each other and so as to avoid the repetition of the facts, all these points are taken up together for discussion.

8. To grant an order of temporary injunction, court should get itself satisfied with the basic principles of prima facie, balance of convenience and hardship. More importantly the existence of a prima facie case in the matter of granting injunction is really the

harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there is no prima facie case at all or the case put forward was so weak and tainted having very little prospect 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. But if there is a prima facie case then other considerations for granting temporary injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff, directly to an injunction without crossing the other hurdles in between. Even if the plaintiff has an invincible prima facie case he will not be entitled *ex debito iustitiae* to grant of an injunction unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case.

9. Thus keeping the above principle in mind, let me proceed to analyze the case on hand. Needless to say that it is for the plaintiff to make out the above mentioned point No.1 to 3. The plaintiff is seeking for an order of temporary injunction on the ground that he is the owner and possessor of the suit property since the date of purchase. In support of his case he has produced as many as seven documents like registered Sale deed, Mutation Entry, RTC's and Photographs of the suit property. It is also interesting to note that the defendants have neither disputed the ownership nor the possession of plaintiff over the suit land. Thus on a combined reading of written statements averments and documents relied by the plaintiff the

plaintiff has primafaciely reveals that he is the owner and in possession of the suit property. Accordingly, I answer Point No.1 in the affirmative.

10. It is the specific contention of the plaintiff that defendant No.1 to 4 without acquiring the suit land and consent of the plaintiff have deployed defendant No.5 & 6 to lay down the pipe line. Although the defendant No.5 & 6 have contended that the defendant No.1 to 4 have complied all the legal requirements before taking up the project but no documents of whatsoever is forthcoming on record. It would not be wrong if I pen here that the best persons to answer the allegation touching upon this material aspect is defendant No.1 to 4 but for the best known reasons to them they have remained exparte. Therefore, in the absence of documents, this court can not hold that the defendants No.1 to 4 have acquired the suit land and carrying out the project in the manner known to law.

11. On the other hand at para No. 7 of their written Statement the defendant No.5 & 6 have specifically contended that almost one and a half acres of suit is required for the project and they have an outer time limit of 18 months to complete the project. It is this factul aspect that pushes me to hold that the balance of convinence lies infavour of plaintiff and boosts the say of the plaintiff that the defendant No. 5 & 6 are taking measurements to lay down the pipeline. If an order is not granted at this juncture, I have no hesitation to say that it would cause severe hardship and injury to plaintiff, who has made out the primafacie case. Therefore, I hold point No.2 & 3 in the affirmative.

13. Point No.4 :- For the foregoing reasons, I proceed to pass the following;

O R D E R

The application filed by the plaintiff Under Order 39 Rule 1 and 2 of C P C is hereby allowed.

The defendant No.1 to 6 are hereby restrained from laying down the pipe line and thereby causing interference in the suit land, till the disposal of the suit.

No order as to cost.

It is explicitly made clear that any observation or opinion expressed herein above is for the limited purpose of considering the instant application alone and the same does not have any impact on the trail and merits of the case.

(Dictated to the stenographer directly on computer, typed by him, corrected by me and then pronounced in the open court on this 10th day of September, 2020)

(Mallikarjuna R. M.)
I/c Addl. Civil Judge & JMFC.,
Yadgir.