

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE BENCH, CHENNAI  
ORIGINAL APPLICATION NO. 191/2023**

**IN THE MATTER OF:-**

Vana Charitable Trust

...Applicant

Versus

State of Karnataka and Others

...Respondents

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New Delhi

Filled By: -



Date: - 06/07/2024

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**REPORT ONE BEHALF OF RESPONDENT NO. 2/DEPUTY  
COMMISSIONER, DAKSHINA KANNADA DISTRICT**

**MOST RESPECTFULLY SHOWETH:**

1. That the present Original Application has been filed alleging that Respondent No. 7 herein is operating a piggery farm without any valid consent and clearances, and is causing pollution.
2. The farm in question was located at Lobo Compound, Yelinje, Aikala Grama, Mangalore, Dakshina Kannada.
3. The answering Respondent had constituted a committee comprising of Assistant Commissioner, Mangalore sub-division; Environmental Officer, KSPCB; Assistant Director, Animal Husbandry and

Veterinary Services Department; Tahsildar, Mulki Taluk and the Executive Officer, Mulki Tauk Panchayath.

4. The above committee conducted a spot inspection in 26.02.2024. The following was noted by the Committee under the said inspection:
  5. The land in question bearing Sy. No. 161/1A2 measuring 7.08 acres situated in Elinje Village, Mulki Taluk belonged to one Isac Canute Lobo. Out of the said extent, 0.50 Acres of land was leased in favour of Victor Jerald Pais for a period of 5 years for the purpose of establishing a Piggery Farm. The lessee Victor Jerald Pais had established the Piggery farm on the said land, but had failed to maintain cleanliness in the said farm which caused smelling in and around the locality, causing health issues to the local inhabitants.
  6. Moreover, the lessee had not obtained any No-objection Certificate or permission from the Local authority.
  7. It is submitted that the lessee Victor Jerald Pais had filed a civil suit in the Court of the Hon'ble Civil Judge and JMFC at Moodabidri, bearing OS No. 188/2022 and had obtained a temporary injunction vide order dated 16.12.2022 over the said land. True Copy of order

dated 16.12.2022 passed by the Hon'ble Civil Judge and JMFC, Moodabidri in OS No. 188/2022 is annexed herewith as **Annexure R-1**.

8. However, vide order dated 01.09.2023, the application filed by the said Victor Jerald Pais seeking temporary injunction came to be rejected. True Copy of order dated 01.09.2023 passed by the Hon'ble Civil Judge and JMFC, Modabidri in OS No. 188/2022 is annexed herewith as **Annexure R-2**.

9. The suit came to be settled between the parties and was accordingly disposed of vide order dated 09.12.2023. True Copy of order dated 09.12.2023 passed by the Hon'ble Civil Judge and JMFC, Moodabidri in OS No. 188/2022 along with compromise deed dated 09.12.2023 is annexed herewith as **Annexure R-3 (Colly)**.

10. As per this compromise deed, the lessee Victor Jerald Pais was bound to surrender the land to the owner, Issac Kenute Lobo on or before 31.03.2024.

11. It is noted that one of the conditions of the Compromise deed was that the Plaintiff was bound to keep the said property clean and

hygienic, without causing any nuisance to the public. The said condition is said to have been violated by the lessee Victor Jerald Pais.

12. It was noted that the lessee, Respondent No. 7 herein had not maintained cleanliness at the farm due to which the local residents were facing issues such as bad smell and respiratory problems. The said farm was informed to have become a source of public nuisance in the locality. Hence in the interest of public health and also to ensure clean environment in the locality, the Chief Executive Officer, Dakshina Kannada ZillaPanchayath, Mangaluru was directed to take immediate action against the said piggery farm.

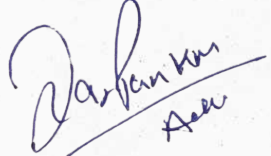
13. Accordingly, the Chief Executive Officer, Dakshina Kannada ZillaPanchayath, Mangaluru in his report to the Deputy Commissioner dated 12.04.2024 has submitted that the Panchayath Development Officer had inspected the spot on 04.04.2024 and as per the order of the Hon'ble Civil Court in OS 188/2022, the owner of the piggery farm/Respondent No. 7 herein has cleared the pigs and the building used for rearing pigs in the above place. True Copy of photograph dated 04.04.2024 captured during the spot inspection is annexed herewith as **Annexure R-4**.

14. It is hence submitted that the farm in question has been removed,  
and hence the Application may be disposed of.

  
Deputy Commissioner  
Dakshina Kannada District  
Mangaluru

Date: 28/06/2024

Filed By

  
Darpan KM  
Asst

Darpan KM  
Standing Counsel  
State of Karnataka

OS 188/2022  
Dt:16-12-2022

Heard arguments of the counsel appearing for the plaintiff on IA No.II. Perused the plaint averments, IA.No.II and affidavit filed in support of I.A.No.II and also documents produced by the plaintiff in support of his case. At this stage, it appears that, there is a prima-facie case to grant temporary injunction. Hence, this court pass the following;

**ORDER**

*Issue temporary injunction as prayed in I.A.No.II and defendants, their men, servants and etc. are hereby restrained from dispossessing the plaintiff from the schedule property or disconnecting or discontinuing the water supply to the piggery farm of the plaintiff situated in the plaint schedule property or obstructing the plaintiff from gaining access to the roadway leading to the schedule property or in any manner interfering with the peaceful possession, enjoyment and running of the piggery farm by the plaintiff till next date of hearing.*

*The plaintiff is directed to comply the provisions of Order XXXIX Rule 3 of C.P.C.*

O.S.No.188/2022

*Issue suit summons to defendant  
and notice on I.A. No.II to the  
defendant, returnable by 25.01.2023.*

Sd/-

**Civil Judge & J.M.F.C.,  
Moodbidri**

ANNEXURE -R-2IN THE COURT OF CIVIL JUDGE AND JMFC, MOODBIDRI

Presided Over by Kum.Mala C., B.A., LL.M.,  
Civil Judge & J.M.F.C., Moodbidri

Dated: This the 1<sup>st</sup> day of September, 2023

O.S./188/2022

**Plaintiff :** Mr.Victor Jerald Pais  
Aged 52 years,  
S/o late Mark Pais,  
R/at Padmanuru,  
Dayasagara, Kinnigoli,  
Mangaluru Taluk, D.K.

**(Rep by Sri.M.Chidananda Kedilaya, Adv.)**

- V/s -

**Defendants:** 1. Sri.Issac Kenute Lobo  
S/o late Iggnatious Lobo,  
R/at Yelinje, Belman,  
Lobo Compound, D.No.3-33,  
Mangaluru Taluk, D.K.

2. The Aikala Village Panchayath  
Damaskatte, Aikala-574 141,  
Mulki Taluk, D.K.,  
Rep.by its PDO.

**(for D1-Sri.K.Sriramana Acharya, Adv.,  
for D2-Smt.M.Veena Bhat, Adv.)**

IN I.A.NO.II

Mr.Victor Jerald Pais .... Applicant/Ptf.

-Vs-

Sri.Issac Kenute Lobo and another ... Opponents/Dfts

**ORDER ON IA No.II**

The plaintiff has filed this application under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC prays to pass an ad-interim order of temporary injunction in favour of plaintiff restraining the defendants, their men, servants, any persons claiming through them from dispossessing the plaintiff forcefully from the schedule property or disconnecting or discontinuing the water supply to the piggery farm of the plaintiff situated in the plaint schedule property or obstructing the plaintiff from gaining access to the roadway leading to the schedule property or in any manner interfering with the peaceful possession, enjoyment and running of the piggery farm by the plaintiff.

**2.** In the affidavit it is stated that, plaint schedule property belongs to the defendant No.1 and he has let out the schedule property to the plaintiff as per the terms of Lease Agreement dated 28.05.2022. Now lease has been renewed and extended from time to time by entering into separate agreement between the parties. The plaint schedule property has let out for the purpose of running piggery farm. The plaintiff has running the piggery farm in the suit schedule property without disturbing others and also maintained cleanness. But now defendant No.1 is stated to vacate the suit premise. The plaintiff is not in a position to close the

same immediately. The plaintiff is depending upon the piggery farm for his livelihood. The plaintiff has received a telephonic call from the PDO of the defendant No.2 who in turn informed that, the Headmistress of the nearby school has lodged a complaint before him stating that the piggery farm is emitting foul smell and causing nuisance to them. It is learnt that, the Headmistress of the school which is situated far away from the plaint schedule property is close friend of the defendant No.1. It is further stated that, on verification with the defendant No.2 he has also informed that since the piggery farm, was not obtained by plaintiff the license for the running of the piggery farm, he will forcefully come and close the farm. Simultaneously, the defendant No.1 also came to the spot and threatened that unless plaintiff remove the piggery farm within a period of one week he will discontinue the supply of the water to the piggery farm. Piggery farm is an agricultural activity which does not require any license from the defendant panchayath. The defendant No.1 is not entitled to disconnect water supply to the schedule property. There are about 150-200 pigs in the piggery farm of the plaintiff herein. Hence, this application.

**3.** On the other hand, defendant No.1 has filed objection by denying the averments made in the Affidavit and stated that, the plaintiff without furnishing proper boundary to the

alleged property claimed injunction and misusing the same to the entire 7-68 acres of land in Sy.No.161/1A2 of Elinje Village of Mulki Taluk. The same is belongs to the defendant. In the interim application more than one relief is claimed in the application which is neither tenable nor permissible in law. It is further stated that, it is the duty of the plaintiff to maintain the piggery farm clean and hygienic condition. Plaintiff's unscientific management of wastage from piggery farm which is unbearable is causing health hazard to the defendant and other neighbors. The neighbourhood of the defendant and school going children and others are suffering nuisance due to bitter fousl smell emitted from the piggery farm of the plaintiff. The plaintiff highly negligent in performing bounden duty who is causing nuisance and acts detrimental to the interest of defendant and others. The plaintiff to protect his illegal and highhanded acts came before the court with false averments which is not permissible. Hence, prays to dismiss the IA with cost.

**4.** The defendant No.2 has filed written statement along with memo stating that written statement may be treated as objections to I.A.No.2. In the objection the defendant No.2 has denied the averments of the plaint as well as I.A. and stated that, plaintiff without complying his duty of maintaining the piggery farm hygienic, suppressing the truth

has filed the above suit with false averments. The piggery farm which is impermissible is causing health hazard to the defendant, neighbours and school children. He is highly neglecting to maintaining cleanness. The defendant is the absolute owner of the written statement schedule property. As per the admission of the plaintiff himself, the plaintiff bound to surrender the vacant possession of the written statement schedule property to the defendant No.1. The defendant No.1 has already got issued registered lawyer notice to the plaintiff calling upon him to vacate the written statement schedule property. The plaintiff is liable to pay rent till filing of the suit of Rs.5,000/- and plaintiff is liable to pay mesne profit at the rate of Rs.10,000/- p.m. from the date of notice of termination of the alleged lease dated 21.01.2023 till surrender of vacant possession of the written statement schedule property to the defendant No.1 and prays to dismiss the I.A.2.

5. Heard both sides.

6. Following points arise for consideration of I.A:-

**POINTS**

1) *Whether plaintiff has made out prima-facie case in order to seek T.I. against the defendants?*

2) *Whether plaintiff proves that the balance of convenience tilt in his favour ?*

3) *Whether plaintiff proves the irreparable loss or injury?*

4) *What order?*

7. Answer to the above 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:** Plaintiff prays to pass an ad-interim order of temporary injunction against the defendants restraining the defendants, their men, servants, any persons claiming through them from dispossessing the plaintiff forcefully from the schedule property or disconnecting or discontinuing the water supply to the piggery farm of the plaintiff situated in the plaint schedule property or obstructing the plaintiff from gaining access to the roadway leading to the schedule property or in any manner interfering with the peaceful possession, enjoyment and running of the piggery farm by the plaintiff.

**9.** In support of the case, the plaintiff has furnished copy of the Lease Agreement and photographs.

**10.** The defendant No.2 has furnished notice issued by the Ikala Panchayath to the defendant dated 07.06.2021, notice issued by the Ikala Panchayath to the defendant No.1 dated 29.11.2022, Reply notice dated 05.12.2022 by the defendant No.1 to Ikala Panchayath, letter issued by the villagers of Yelinje Village to the Ikala Panchayath, letter issued by the students of Little Flowers School Yelinje to the Ikala Panchayath, Resolution passed by the Ikala Panchayath, Photographs, C.D. and Bill.

**11.** Plaintiff is stating that, he is running the piggery farm in the suit schedule property. Defendant is the owner of the said property and he has obtained the suit schedule property for lease to run the piggery farm. But defendant has stating that, plaintiff is not maintaining cleanness and hygienic conditions. This school is near by piggery farm. The plaintiff is highly negligent in performing bound and duty who is causing license and acts detrimental to the interest of defendant and others. Even though the lease period is exciting, photographs filed by the defendant shows that, defendant not maintained cleanness. Moreover plaintiff not obtained license to perform the piggery farm. But plaintiff is

stating that, 'it is agricultural activity license is not necessary'. But it is the constitutional right of an individual the same can not be held absolute right without any reasonable restrictions under the constitution and every citizen is bound to act to the interest of the society. Maintaining the good environmental is the fundamental right of every citizen. But defendant is stating that, plaintiff is not maintaining cleanness in the suit schedule property. That is effect to the school children and old age persons. The defendant has issued letter dated 07-06-2021 and 29-11-2022 show that, plaintiff is not maintaining good environmental in the suit schedule property. He is violating the norms of the pollution control board. Hence, village peoples are written letter to PDO in this regard. It shows that, the plaintiff is running piggery farm not in good condition or not maintaining good environment in the suit schedule property. Under such circumstance plaintiff has failed to prove prima-facie cases.

**12.** If the I.A is allowed, the village people or neighbors of the suit schedule property will be suffered irreparable loses causes to the neighbors and defendants. Under such circumstances, this court relied upon the decision.

**“AIR 2010 Supreme Court page 296 in between Kashi Math Samsthan and another V/s Srimad Sudhindra Thirtha Swamy and another”**, wherein it is held that:-

(A) Civil P.C. (5 to 1908), 39 Rule-1- Injunction-Grant of Party unable to prove prima facie case-Injunction cannot be granted even if such party makes out case of balance of convenience and irreparable injury.

**13.** The above decision is applicable to the present case. The plaintiff has failed to establish prima-facie case to allow the application in his favour nor balance of convenience leans in his favour. Accordingly, this Court answers Point Nos.1 to 3 in the **Negative**.

**14. Point No.4:-** For the above said reasons, this Court proceed to pass the following;

**ORDER**

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

*(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this the 01<sup>st</sup> day of September, 2023.)*

Digitally signed  
by CHANDRU  
MALA  
Date:  
2023.09.08  
13:13:49 +0530

**(MALA C.)**

Civil Judge & JMFC.,  
Moodbidri

IN THE COURT OF CIVIL JUDGE AND J.M.F.C. AT MOODABIDRI

O.S.NO. 188/2022

BETWEEN,

Mr. Victor Jerald Pais

Plaintiff

And

1) Sri. Issac Kenute Lobo

2) The Aikala Village Panchayath

Defendants

COMPROMISE PETITION FILED UNDER ORDER XXIII RULE 3 OF CODE OF CIVIL PROCEDURE ON BEHALF OF THE PLAINTIFF AND DEFENDANT NO. 1 IN THE ABOVE CASE.

It is submitted as follows:

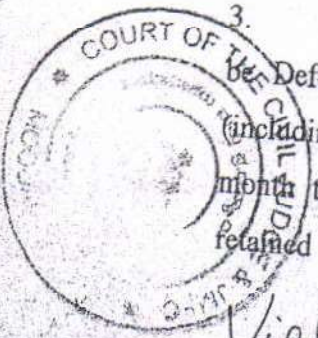
1. The Plaintiff and Defendant No. 1 have amicably settled and compromised the above suit in terms of the following.

2. As per the compromise entered between the Plaintiff and Defendant No. 1 this compromise petition is filed. As per compromise the plaintiff and defendant No. 1 herein who are the petitioner and Respondent No. 1 in M.A. 37/2023 on the file of Senior Civil Judge and J.M.F.C. at Moodabidri had already reported the compromise in the said proceeding. As per compromise the plaintiff herein bound to surrender the plaint schedule property (written statement schedule property) to the Defendant No. 1 in the above suit, on or before 31/03/2024 without any objection whatsoever. The said surrender of plaint schedule property shall be made after removing all the materials belonging to plaintiff in the plaint schedule property and leveling and cleaning the same by the plaintiff himself without disturbing the plaint schedule property.

31/3/24



Seen  
M. S. Bab  
Adv. for D2



3. At the time of the surrender of the plaint schedule property to Defendant No. 1 the agreed rent due from December 2022 (including the month of December 2022) at the rate of Rs. 5,200/- per month till date of delivery has to be deducted from the deposit retained by Defendant No. 1 and balance amount i.e., rest of the

Victor J. Pais, *[Signature]*

amount has to be paid to the plaintiff after deducting any cost if any. If plaintiff failed to comply the terms as stated in the Para No. 2 the Defendant No. 1 is entitled to collect and plaintiff is liable to pay such cost and damages to the Defendant No. 1.

4 As per the compromise between the parties, counter claim claimed by the Defendant No. 1 Issac Kenute Lobo in the said suit has to be decreed interms of the compromise. The Defendant No. 1 is entitled to file execution petition directly against plaintiff herein on the basis of the said decree infavour of Defendant No. 1, in case of default or non compliance by the petitioner/plaintiff. In such an eventuality the plaintiff herein shall pay rent, cost and damages till delivery of the possession of the plaint schedule property to the Defendant No. 1.

5. Till the surrender of the plaint schedule property the plaintiff herein bound to maintain the plaint schedule property clean and in hygienic manner without disturbing the rights of the Defendant No. 1 or without causing any nuisance to the public.

6. The Defendant No. 1 shall pay balance amount out of the deposit amount after deducting rent and cost as stated above at the time of delivery of the possession of the plaint schedule property without any delay. In case of default by defendant No. 1 he is liable to pay interest upon such amount to the plaintiff.

7. There may be order as per the terms of the compromise by dismissing the suit of the plaintiff and **allowing the counter claim of the Defendant No. 1.**

Hence it is prayed that court may be pleased to dispose of above petition by dismissing the above suit and by allowing the



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2 the  
uch

counter claim of the defendant No. 1 as prayed in the written statement by passing necessary order in the interest of justice.

*Victy J. Pair*

Plaintiff

*[Signature]*

Defendant No. 1

*[Signature]*

Advocate for the Plaintiff

*[Signature]*

Advocate for the Defendant No. 1

Karkala

Date: 9 /12/2023

*Annexed to Compromise Decree  
in O.S. No. 188/2022*

*[Signature]*

Civil Judge & J. M. F. C.,  
Moodbidri, D. K.

Certified that this is a True and Accurate  
Copy of the Original. All the matter  
appearing in the Original has been  
faithfully copied with its modification.

*[Signature]*  
EXAMINER  
Civil Judge & J. M. F. C. Court, Moodbidri



OS.No.188/2022 Dated: 09-12-2023
-------------------------------------

Case called out before Lok-adalath.

Both parties are present with their respective counsels and have filed compromise petition U/O 23 rule 3 R/W 151 of CPC. The contents of compromise petition is read over explained to the both parties and both parties have agreed the terms and conditions of the compromise petition and submitted no objection to the decree the suit in terms of compromise petition. Perused, the compromise petition, the same is in accordance with law. Therefore, there is no legal impediment to allow the compromise petition. Therefore, suit of plaintiff is hereby dismissed and counter claim of the defendant No.1 is decreed in terms and conditions of the compromise petition.

Office is directed to draw final decree accordingly.

Sd/-

CIVIL JUDGE & J.M.F.C.,  
MOODBIDRI

ANNEXURE -R-4



GPS Map Camera

Talapady, Karnataka, India  
3VQ8+24, Shanthi Palke, Talapady, Karnataka 574141, India  
Lat 13.087268°  
Long 74.867205°  
04/04/24 04:23 PM GMT +05:30

Google