

KABK610005182020



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.  
AT BANAHATTI**

**: PRESENT :**

**Miss. Shushma T.C.  
B.Com., LL.B.,**

Civil Judge & J.M.F.C., Banahatti

**O.S No.81/2020**

**Dated this, the 10<sup>th</sup> day of December, 2024**

1. Surekha Dadasab @ Dadasaheb Desai,  
and others

**... Plaintiffs**

(Represented by Sri. H.R.P., Advocate)

**- Vs -**

1. Yallappa S/o Shidamallappa Gubachi & others

**... Defendants**

(Represented by Sri. P.N.K., Advocate)

**: PARTIES IN I.A No. I :**

1. Surekha Dadasab @ Dadasaheb Desai and others,  
All are R/o: Hanagandi, Tq: Rabakavi-Banahatti.

**... Applicants/Plaintiffs**

**- Vs -**

1. Yallappa S/o Shidamallappa Gubachi & others  
All are R/o: Hanagandi, Tq: Rabakavi-Banahatti,

**... Opponents/Defendants**

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Provision under which application is filed : U/o 39 Rule 1 & 2 R/w sec.151 of CPC

Relief sought for : Discretionary relief of temporary injunction

Date of filing the application : 18.05.2020

Number of the application : I.A No.1

Date of filing objection/memo : 13.07.2020

Date of pronouncement of the order : 10.12.2024

**: ORDERS ON I.A NO. I :**

The plaintiffs have filed this application U/o 39 Rule 1 and 2 R/w sec.151 of CPC seeking an order of temporary injunction against original defendant No.1 to 4 seeking to restrain them or anybody claiming through them from causing any sort of obstruction for cutting trees grown in lands bearing R.S No.34 measuring 6 acres 03 guntas, R.S No.35 measuring 10 acres 24 guntas and R.S No.36/2 measuring 2 acres 17 guntas all situated at Hanagandi village till disposal of this suit. This application was filed at the initial stage of filing this suit in 2020 and due to the

pendency of appeal before Hon'ble High court of Karnataka and due to the filing of various applications, this application was not decided on merits within prescribed time.

2. In support of this application, plaintiff No.2 has sworn to an affidavit stating that, he is swearing to this affidavit on behalf of himself and also on behalf of other plaintiffs. It is submitted that, they have filed this suit for permanent injunction in respect of lands bearing R.S No.34 measuring 6 acres 03 guntas, R.S No.35 measuring 10 acres 24 guntas and R.S No.36/2 measuring 2 acres 17 guntas all situated at Hanagandi village and they are the absolute owners in actual possession and enjoyment of the same. It is submitted that, they are in peaceful possession of suit properties since their ancestors and there are aged mango trees which are about to fall any time and they are growing sugarcane, maize and turmeric crops. The defendants are no where concerned to suit properties and in spite of the same, they are causing obstruction for their possession and enjoyment of the same. It is submitted that, they had filed a suit against defendant No.1 in O.S No.04/2004 for permanent injunction wherein, the court had framed 9 issues and with regard to an issue

pertaining to the possession of plaintiffs herein, the court had opined the said issue in the affirmative. However, the suit was dismissed and so also the counter claim of defendant is also dismissed. The defendant had preferred an appeal in R.A No.142/2006 against the order of dismissal of counter claim and the same came to be dismissed on 11.09.2007. Thereafter, the R.A. Misc. No.49/2010 came to be dismissed on 01.09.2014 and another Misc. No.24/2014 was filed and the same came to be transferred to the court of Senior Civil Judge and Banahatti and renamed as 08/2016 and the said case is also dismissed on 01.11.2019. The defendants are causing continuous obstruction to the possession of plaintiffs over suit property and the Tahsildar, Jamakhandi had given report to Terdal police and accordingly, Revenue Officer, Terdal was appointed as receiver and the said order was questioned in W.P. No.71116/2012 before Hon'ble High court of Karnataka. By the order dated 07.03.2019, the High Court has stated that, Executive Magistrate cannot decide the issue regarding possession of properties. It is submitted that, they are the absolute owners in actual possession of suit properties and defendants have given application to Land

Tribunal, Jamakhandi in form No.7(a) seeking to declare him as persons in possession and the same was rejected as suit properties are not tenanted lands. It is submitted that, on 01.02.2020, defendants are causing obstruction for cutting old trees grown in suit properties and thereby are causing obstruction for their possession. Hence, plaintiffs are constrained to file this suit and application. It is submitted that, plaintiffs have got prima facie case and balance of convenience lies in their favour. If the application is rejected, they would be put to irreparable loss, injury and hardship which cannot be compensated in terms of money. On the other hand, if the application is allowed, no hardship would be cause to defendants. On these grounds, prayed to allow the application.

3. On the other hand, defendants have appeared through their respective counsels and have filed their written statement objecting the entire case of plaintiffs and filed a memo to consider the contents of written statement as objection to this application. It is contended that, matter is pending before the Hon'ble District and Session Court, Jamakhandi in

Civil.Misc.No.14/2019 in respect of same properties against the judgment and decree passed by this court in O.S No.04/2004 dated 31.08.2006 and hence, this suit is not maintainable. It is contended that, they are in actual possession and enjoyment of suit properties since long and plaintiffs are claiming only on the basis of disputed revenue records and are causing obstruction to the possession and enjoyment over suit properties of defendants. The order of appointment of receiver is set aside by Hon'ble High Court of Karnataka only with an observation that, recourse is open to parties to have remedy in the civil court. In view of pendency of Civil Misc. No.14/2019, the 2<sup>nd</sup> suit by plaintiffs is not maintainable. With regard to the question of pendency, same is pending before KAT, Bangalore and the standing trees in suit properties are belonging to defendants who have grown the same around 20-30 years ago. The plaintiffs have not described the particulars and number of trees in the plaint and as well as in I.A No.1. It is submitted that, plaintiffs have not approached this court with clean hands and hence, they are not entitled for discretionary relief of temporary injunction. It is contended that, plaintiffs have no prima facie

case and if the application is allowed, they would be put to irreparable loss and injury and on the other hand, if the application is rejected, no harm or loss would be caused to plaintiffs. On these grounds prayed to reject the application.

4. Heard both sides and perused the materials placed on record.
5. On the basis of rival contentions of parties, the points that would arise for my consideration are as follows:
  1. Whether plaintiffs have made out prima facie case for the grant of TI order in their favour?
  2. Whether balance of convenience lies in favour of plaintiffs?
  3. Whether plaintiffs will be put to irreparable loss or injury, if an order of temporary injunction is rejected?
  4. What order?
6. My answers to the above points are as under:
  - Point No.1 : In the **Negative**.
  - Point No.2 : Does not arise for consideration.
  - Point No.3 : Does not arise for consideration.
  - Point No.4 : As per final order,  
for the following:

**: R E A S O N S :**

7. **Point No.1:** The plaintiffs have filed this suit for the relief of permanent injunction seeking to restrain defendants from

causing obstruction to the peaceful possession and enjoyment over suit properties. The contents of this application and written statement are discussed in detail in the above paragraphs and hence, I am directly discussing merits of this application. The plaintiffs have filed this application seeking to restrain defendants from causing any sort of obstruction for the cutting of trees grown in suit properties. The plaintiffs are claiming that, they have grown the trees in suit properties and the same is situated in suit properties. On the other hand, defendants have contended that, they are in possession and enjoyment of suit properties and standing trees situated in suit properties are belonging to them. The plaintiffs have not given any description/particulars of standing trees and hence, they are not entitled for discretionary relief of temporary injunction.

8. It is a settled law that, while considering an application under Order 39 Rule 1 & 2 of CPC, court has to look into prima facie case and not to examine the case on merits that, whether plaintiff is likely to succeed in the case or not. Plaintiff has to make out prima facie case for the grant of discretionary relief of temporary injunction. It is also a settled law that, a party is

not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of plaintiff only if it is proved to the satisfaction of the court that, unless defendant is restrained by an order of injunction, irreparable loss or damage will be caused to plaintiff during the pendency of suit. The court further has to satisfy that, non-interference by the court would result in irreparable injury to the party seeking relief.

9. In the light of the above principle, when we look into the present case on hand, based on rival contentions urged by both parties and after careful consideration of pleadings of parties, it is observed that, both parties are placing reliance on the earlier suits and submitting that, there is a pendency of a case before Hon'ble District & Sessions Judge, Jamahandi and in view of the specific relief/prayer sought by plaintiffs with regard to restraining defendants from cutting trees, I am of the opinion that, plaintiffs are certainly not entitled for the relief claimed therein. It is for the plaintiffs to prove their lawful possession over suit properties and the existence of alleged trees (without any description or

particulars) and thereafter, have to prove alleged interference by defendants. Only then, they are entitled for the relief of permanent injunction. The same is required to be adjudicated on trial after recording evidence of both sides and it takes time.

10. The contentions urged by parties will be adjudicated after full fledged trial. Moreover, in view of the rival contentions of parties, if the application is allowed, it would be certainly prejudice the rights of parties. At this juncture, without going into merits of the case, I am of the opinion that, plaintiffs have not made out prima facie case for the grant of discretionary relief of temporary injunction in their favour. Hence, this court cannot exercise its judicial discretion to grant an order of temporary injunction. Accordingly, I proceed to answer point No.1 in the **Negative**.

11. **Point No.2:** It is a settled position of law that, plaintiffs must satisfy to the court, the existence of prima facie case and balance of convenience and irreparable loss in their favour for the grant of temporary injunction. All the three ingredients have to be fulfilled by the plaintiff. If any one of

the ingredients is not shown to the satisfaction of the court, court cannot grant discretionary relief of temporary injunction in favour of plaintiff. Here, in the present case, plaintiffs have not made out prima facie case for the grant of temporary injunction in their favour and hence, it is just and proper to hold that, consideration of this point does not arise at all. Hence, point No.2 is answered accordingly.

12. **Point No.3:** By considering facts and circumstances of the case and based on my discussion on the above points, since plaintiffs have not made out prima facie case and have not convinced this court that, balance of convenience lies in their favour and moreover, have not shown that, judicial intervention is necessary to protect their alleged right over subject matter of this application, failing which, they would be put to great hardship which cannot be compensated in any terms. Hence, point No.3 is answered accordingly.

13. **Point No.4:** In view of my discussion and reasons given while answering the above points, I proceed to pass the following:

**: O R D E R :**

I.A No.1 filed by plaintiffs' U/o 39 Rule 1 and 2 R/w sec.151 of CPC is hereby rejected.

There shall be no order as to cost.

*(Dictated to the stenographer directly on computer, typed by him, corrected by me and then, signed and pronounced by me in the open court on this, the 10<sup>th</sup> day of December, 2024)*

**(Shushma T.C.)  
Civil Judge & JMFC, Banahatti.**