

KABK710036992021



O.S./192/2021
{CASE_CAUSE_TITLE}

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI.**

PRESENT :
SHRI. ARASHAD ANSARI,
B.Com, L.L.M.,
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 21st day of September – 2023

O.S. No.192/2021

1. Shri.Sangappa S/o Parappa Hunnur,
Age: 45 years, Occ: Agriculture,
R/o Mareguddi village,
Tq: Jamkhandi, Dist: Bagalkot
and Another.

..... Plaintiffs.

(By Shri.G.I.Z., Advocate)

Vs.

1. Shri.Giramallappa S/o Nagappa Gundi,
Age: 40 years, Occ: Agriculture,
R/o Mareguddi village,
Tq: Jamkhandi, Dist: Bagalkot.

..... Defendant.

(By Shri.R.N.D., Advocate)

I. A. No.III

1. Shri.Sangappa S/o Parappa Hunnur,

..... Applicant/(Original Plaintiff).

Vs.

1. Shri.Giramallappa S/o Nagappa Gundi,

.....Opponent/Defendant.

ORDERS ON I.A. No.III FILED BY
PLAINTIFF/APPLICANT UNDER ORDER 39
RULE 1 AND 2 R/W SECTION 151 OF C.P.C.

This application is filed by plaintiffs/applicants seeking order of temporary injunction against the defendant restraining them to from cutting the trees which are situated in the suit encroached portion till disposal of the suit.

2. In support of application, the plaintiffs have sworn to an affidavit, wherein they stated that, on 14-10-2022 defendant is very hurriedly started to cut the Neems and Hunashe (tamarind) trees etc which are situated in the suit encroached portion and that area is up to 3 guntas in plaintiffs suit land. The said trees are grown from last 30 years and these are valuable trees

and if the defendant cut the said trees plaintiff's will be put to heavy loss and injury. On these grounds prayed to allow this application.

3. Defendant did not file any objections, in spite of giving sufficient opportunities.

4. Heard the arguments of both the learned counsels, perused the records placed before the court.

5. The points that arose for my consideration is as under :

- 1) Whether plaintiffs have made out prima-facie case to grant the temporary injunction in his favour?
 - 2) Whether the balance of convenience lies in favour of plaintiffs?
 - 3) Whether plaintiffs prove that irreparable loss will be caused to them if TI is not granted?
 - 4) What Order?
6. My findings to the above points is 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 :

: R E A S O N S :

7. **POINT No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. It is the case of plaintiffs that, plaintiffs are the joint owners and in actual possession and enjoyment of the suit land bearing R.S.No.214/3 measuring 04 acres 02 guntas situated at Hunnur village in Jamkhandi taluka out of which 03 guntas of land shown as kharab and plaintiffs have put up shed in the 3 guntas kharab land for keeping agriculture equipments. The defendant is the owner of land bearing R.S.No.214/2 measuring 03 acres 38 guntas. Out of which 06 guntas is kharab land. This being the case defendant is causing disturbance and preventing the plaintiffs using his shed which is situated in 03 guntas of kharab land. The counsel for plaintiffs filed this present application seeking

direction to stop the defendant from cutting the trees in the encroached portion shown in the hand sketch map produced by the plaintiffs. It is averred by the plaintiff's that defendant is hurriedly trying to chop the trees such Neems and Tamarind which are grown in the encroached portion and they are all valuable trees and if the same is chopped out they will be put to irreparable loss. On the other hand defendant not chosen to file any objections.

9. On perusal of pleadings and documents available on record it goes to show that plaintiffs have filed this against the defendant regarding the encroachment of 03 guntas which is shown as kharab land over the plaintiffs suit property. But it is averred in the application that they have trees from last 30 years in that encroached portion. Whether the defendant has encroached into plaintiff's suit land or not to consider this aspect it needs full-fledged trial and mini trial cannot be held at this stage of the case and there are no documents available on record to show that there are

trees existed in the encroached portion by the defendant and he is illegally trying to chop off the trees planted in the suit land of defendant. Until and unless it is proved by the plaintiff's that defendant has encroached in his suit land it cannot be directed to the defendant not to chop any trees in the alleged encroached portion. If the application is allowed it may also leads to multiplicity of proceedings. It is settled position in **Dalpat Kumar Vs. Prahlad Singh (1992) 1 SCC 719** wherein it is held that, "It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the

comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it". In the light of ratio laid down in above decision and the discussion made supra it is clear that plaintiff is failed to make out prima-facie case and balance of convenience lies in his favour. On going through the decision relied above, I come to the conclusion and Therefore, I answer Point No.1 and 2 in the '**Negative**'.

10. **Point No.3:-** In view of reasons discussed above the plaintiff's fails to prove that, balance of convince and prima-facie case is lies in his favor. It can be held at this stage that by refusing grant of temporary injunction no irreparable loss would be caused to them. Hence, I answer Point No.3 in the '**Negative**'.

11. **Point No.4:-** For the reasons and finding given to Point No.1 to 3, I proceed to pass the following :

: ORDER :

I. A. No.III filed by the plaintiffs
under Order 39 Rule 1 and 2 of C.P.C
is hereby rejected.

No order as to costs.

*(Dictated to the Stenographer directly on computer and typed by
him, and corrected, printout taken, signed by me and then pronounced in
the open court on this the **21st day of September - 2023**)*

Sd/-
(Arashad Ansari),
Addl. Civil Judge & JMFC,
Jamkhandi.