

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.,
Senior Civil Judge & J.M.F.C.
Devanahalli

Dated this the 3rd Day of April, 2021

O.S.No.329/2014

1. Smt. Shanthamma & Others	:	<u>Plaintiffs</u> (Pltfs. - By Sri. D.N.N., Advocate)
V/s.		
Sri. Jaganath	:	<u>Defendant</u> (Deft. - By Sri. B.C.G., Advocate)

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**ORDERS ON I.A.No.VII**

The plaintiffs have filed the I.A.No.VII under Order 39 Rule 1 and 2 r/w. Section 151 of C.P.C. They seek to restrain the defendant from cutting and removing eucalyptus trees grown in Sy.No.68 measuring 5 acres 38 guntas and Sy.No.71 measuring 4 acres 15 guntas of Byappanahalli Village.

2. In support of the I.A.No.VII, the plaintiff No.2 deposed to the affidavit for himself and for other plaintiffs also. He contends that, the above suit is filed by them for

partition and separate possession of their share in the above properties. The defendant's father and father of the plaintiffs No.2 to 4 are brothers and they have jointly purchased the above properties under a registered Sale Deed dated 24.12.1957 and they have also grown eucalyptus trees in the land and they were in joint possession. After the death of the defendant's father, the defendant has filed Form No.7A in respect of Sy.No.71 and during the pendency of the said proceedings before the Land Tribunal, the father of the plaintiffs No.2 to 4 was died and these plaintiffs were brought on the record as the legal representatives. The Land Tribunal was pleased to reject the Form No.7A of the defendant by holding that, the father of defendant and father of the plaintiffs No.2 to 4 have jointly purchased the property. Thereafter, the plaintiffs have demanded for partition and the defendant has refused for the same. Therefore, the plaintiffs have filed the suit for partition. When the case is posted for evidence, on 24.11.2020 at 11.00 AM the defendant has tried to cut and remove the eucalyptus trees grown in the above properties. The plaintiffs approached the jurisdictional police, but, the police have refused to take action as the matter is Civil in nature. For these reasons, the plaintiffs have filed the I.A.No.VII seeking Injunction to restrain the defendant from cutting and removing eucalyptus trees.

3. The defendant has filed his objections to the I.A.No.VII and he has denied the entire allegations made by the plaintiffs in their I.A.No.VII as false. The defendant has

submitted that, Sy.No.68 measuring 5 acres 38 guntas was purchased by his father under a registered Sale Deed dated 03.02.1965. Therefore, the revenue records have been mutated to the name of the father of the defendant. After the death of his father, the defendant became the absolute owner of the Sy.No.68. The Sy.No.71 measuring 4 acres 15 guntas was owned by the father of the defendant and father of the plaintiffs No.2 to 4 and therefore, the family members of the plaintiffs are in possession of half portion of Sy.No.71. The defendant is having possession over the remaining half portion of Sy.No.71. Therefore, the defendant has prayed for rejection of the I.A.No.VII.

4. Both sides have filed their written arguments on I.A.No.VII. After perusal of the documents and written arguments, the following Points are arise for consideration before the Court:

### **P O I N T S**

- 1. Whether the plaintiffs have prima-facie case?**
- 2. Whether balance of convenience lies in favour of plaintiffs?**
- 3. Whether the plaintiffs would suffer irreparable loss and injury if the injunction is refused?**
- 4. What order or decree?**

5. My findings to the above points are as follows;

**Point No.1: In the Affirmative**

**Point No.2: In the Affirmative**

**Point No.3: In the Affirmative**

**Point No.4: As per the final order  
for the following;**

### **REASONS**

6. **Point No.1:-** It is the case of the plaintiffs that, the father of the defendant and the father of the plaintiffs No.2 to 4 have jointly purchased the Sy.No.68 and Sy.No.71 and they were in joint possession till their death and thereafter, the plaintiffs and defendant are in joint possession over the said properties. The defendant has contended that, his father had purchased the Sy.No.68 and he is the absolute owner of the said property. The defendant has further contended that, the Sy.No.71 was jointly in the names of his father and the father of the plaintiffs No.2 to 4 and the plaintiffs are only in possession of half extent of Sy.No.71 and the defendant is in possession of the remaining half extent of the Sy.No.71.

7. The plaintiff No.2 has contended in his affidavit and written arguments about sale of eucalyptus trees by the father of the defendant and his father jointly and in support of the said contention, the plaintiffs have produced documents showing sale of eucalyptus trees in favour of Omkar Trading Dealers dated 23.05.1993 and in favour of Commission Agent Bachhegowda. The said documents show that, Omkar Traders

have purchased the eucalyptus trees grown in Sy.Nos.68 and 71 for Rs.55,000/- and it is also mentioned in the said documents that, the katha of these two survey numbers are standing in the joint names of the fathers of defendant and plaintiffs No.2 to 4. The said agreement to purchase the eucalyptus trees were made by the traders with the father of the plaintiffs No.2 to 4.

8. Except producing the R.T.C. Extract of Sy.No.68, the defendant has not produced any other documents in support of his father purchasing the Sy.No.68. The defendant is also silent about cutting and removing the eucalyptus trees grown in the above properties. Since, the above suit is for partition and separate possession and the defendant has claimed that, the Sy.No.68 absolutely belongs to him and in Sy.No.71 the plaintiffs are only having possession of half extent and therefore, the plaintiffs have proved a prima-facie case to protect the standing trees being removed from the properties till disposal of the suit. Therefore, the Court answers the **Point No.1 in the Affirmative.**

9. **Point No.2:-** The plaintiffs have filed this suit for partition and separate possession of their share in the suit schedule properties and also for mesne profits. The defendant contends that, the plaintiffs are having in possession of half extent of Sy.No.71 and he is in possession of remaining half extent. The defendant has not stated in his objections and written statement about how the plaintiffs and himself are in possession over the half extent each in the

Sy.No.71. The plaintiffs are seeking restraining the defendant from cutting and removing the trees and the said trees are timber in nature and therefore, there is no danger of the said trees being decomposed or destroyed if they were not cut within a prescribed time. Therefore, the plaintiffs are having balance of convenience also in their favour as in the event if the defendant is able to prove by evidence about his rights over the eucalyptus trees then also the defendant can cut and remove the trees for a higher value. For these reasons, the Court answers the **Point No.2 in the Affirmative.**

10. **Point No.3:-** Since, the suit is for partition and separate possession and also for mesne profits and therefore, if the defendant alone is permitted to cut and remove the trees and appropriated the amount for himself then, the plaintiffs have to face unnecessary hardship to recover the amount of their share of the sale of the trees. On the other hand, if it is proved by evidence that, the defendant alone is entitled for cutting and removing the trees grown on the suit schedule properties then also the defendant can get higher price for the standing timber at a future date. Therefore, if the hardship faced by the plaintiffs is considered along with the hardship of the defendant, the plaintiffs' hardship is weighing more and therefore, the Court answers the **Point No.3 in the Affirmative.**

11. **Point No.4:-** For the above discussion, the Court proceeds to pass the following:-

**ORDER**

**The I.A.No.VII filed by the plaintiff under Order 39 Rule 1 and 2 r/w. Section 151 of C.P.C. is hereby allowed.**

**The defendant is restrained by way of ad-interim temporary injunction from cutting and removing the eucalyptus trees standing in the suit schedule properties till further orders.**

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 3<sup>rd</sup> day of April, 2021).

**(MADHUSUDHANA D.K.)  
Senior Civil Judge & JMFC.,  
Devanahalli.**