

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
HIRIYUR.

Present: Sri. **Santosh Siddappa Palledh,**
B.A. LL.B.,(Spl)
Senior Civil Judge & JMFC.

O.S. No. 39/2014

Dated this the 9th day of **April** 2018

- Plaintiff:** .
1. S.Y. Thippeswamy S/o
Late Yalagattappa,
Aged about 60 years,
 2. Laxmakka W/o Chowdi hanumanthappa,
Aged about 70 years,
 3. Rajanna S/o Late Kenchappa,
Aged about 50 years,
 4. Hanumanthappa S/o Late Kenchappa,
Aged about 47 years,

All are an agriculturist, R/o Sidlayyanakote
Village, Dharampura Hobli, Hiriya Taluk.

(By Sri. G.K.M Advocate)

// Versus //

- Defendants:**
1. Laxmakka W/o Late Hosurappa
Aged about 56 years,
 2. Thippeswamy S/o Late Hosurappa,
Aged about 25 years,
 3. Manjanna S/o Late Hosurappa,
Aged about 20 years,

4. Nelamma W/O Late Naganna,
Aged about 55 years, Kumar S/o Late
Naganna, Aged about 30 years,
5. Anantha S/o Late Naganna,
Aged about 25 years,
6. Ranganna S/o Late Hanumanthappa,
Aged about 60 years,
Agriculturist, R/o Gorlattu village,
Hiriyur Taluk,
7. Gangamma W/o Ganganna,
Aged about 23 years,
R/o Mahanthapura village,
Kalyanadurga Taluk,
Ananthapura District,
8. Sharadamma W/o Linganna,
Aged about 45 years,
R/o Gorlattu village,
Challakere Taluk,
9. Sunandamma W/o Lingappa,
Aged about 40 years,
R/o Gorlattu village,
Challakere Taluk,
10. Kenchappa S/o Madure Hanumanthappa,
Dead by his LR's,
 - (a) Guruswamy S/o Late Kenchappa,
Aged about 50 years, Agriculturist,
R/o Shidlayyana kote village, Hiriyur
Taluk
 - (b) Laxmidevi W/o Late Rajanna,
Aged about 45 years, Coolie,
R/o Shidlayyana kote village, Hiriyur
Taluk,

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(c) Kenchamma D/o Late Rajanna,
W/o Shekhara @ Somashekhara,
Aged about 26 years, Cooi,
R/o Sangenahally village, Hiriyr Taluk,

(d) Vasanthamma D/o Late Rajanna
Aged about 24 years, Cooli,
R/o V.V Pura village, Hiriyr Taluk,

(e) Vasantha S/o Late Rajanna,
Aged about 15 years, Student,
Minor Represented by his Natural
Gaurdian His mother Laxmideve i.e.,
Defendant No.11(b).
R/o Shidlayyana Kote village,
Hiriyr Taluk.

(f) Jayamma W/o
Aged about 46 years, Coolie,
R/o Shidlayyana Kote Village,
Hiriyr Taluk,

(g) Jayanna S/o Late Kenchappa
Aged about 44 years, Coolie,
R/o Shidlayyana Kote village
Hiriyr Taluk.

11. Malleshappa S/o Madure
Hanumanthappa, Aged about 60 years,

12. Laxmana S/o Madure Hanumanthappa,
Aged about 57 years,

The defendants No.1 to 6, 11 to 13 are
R/o Sidlayyanakote village,
Dharmapura Hobli,
Hiriyr Taluk.

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**ORDER ON IA 2 FILED U/O 39 RULE 1 AND 2
OF CPC AND IA 7 FILED U/O 39 RULE 4 OF
CPC**

The plaintiff has filed IA 2 U/O 39 rule 1 and 2 of CPC seeking to restrain the defendant No. 11 to 17 from cutting and removing the trees situated in the B Schedule properties. It is contended that, the suit properties are ancestral and joint family properties of plaintiffs and defendants and the defendants have obstructed peaceful possession of plaintiff by taking advantage of their name entered in the revenue records. They also attempted to trespass in the " B " schedule property and made an attempt to cut and remove fruit yielding trees. Therefore the said application was filed.

2. The defendants 11 to 17 filed objections and denied the fact that, the trees are existing in the " B " schedule property and Genealogical tree filed is false , plaintiff intentionally left the two brothers of Hosurappa. Therefore, sought to reject the application.

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3. The defendant No. 11 to 17 have filed application Under Order 39 rule 4 of CPC seeking to vacate the ex-parte Injunction order on the same grounds urged above and plaintiff has opposed in the same line.

4. Heard arguments. The following points arise for my consideration:

1. Whether plaintiff proves the Prima Facie case Lies in their favor?

2. Whether plaintiff proves that, balance of convenience lies in their favor and irreparable loss will be caused if Injunction is not granted?

3. Whether defendants 11 to 17 make out ground to vacate the ex-parte Temporary Injunction order granted against them on 12-06-2014.?

4. What Order ?

5. My answers to the above points are as follows:

Point No. 1 & 2 : In the Affirmative

Point No. 3 : In the Negative

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

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REASONS

6. **Point No.1 to 3** : These points are taken up together for common discussion to avoid repetition of facts. In this case the suit is filed for declaration that both plaintiffs and defendants 1 to 10 shall be declared as joint owners and injunction against defendants no 11 to 17. Both parties admit that, suit properties are joint and ancestral properties. Such being the case the plaintiff has filed I.A for restraining the defendants 11 to 17 from cutting the trees situated in the "B" Schedule property. The "B" Schedule property is Sy. No. 50, measuring 21-00 acres, 07 guntas consisting of old well, Tamarind tree, Neem tree, Mango tree. The R.T.C. copy produced by the plaintiffs show that, there is existence of tamarind tree in the year 1975-76 R.T.C. copy and it is visible in the R.T.C. copy issued till 1985-86 years. Even it is mentioned in the year 1990-91 R.T.C. But there on words it is not reflected in the recent R.T.C. copies.

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7. The defendants contended that, there are no such trees existing as pleaded by plaintiff. But, the R.T.C. copies of the earlier years show the existence of tamarind trees. Hence, it makes clear that, there is existing at least one tamarind tree in the "B" schedule property. The same has to be disproved in the course of evidence. But, at this stage there are Prima Facie documents showing existence of trees in the suit "B" suit schedule property. The written statement of defendant 11 to 17 goes to show that, they admit the fact that, the suit properties are the ancestral and joint family properties of plaintiffs and themselves. Such being the case when the suit is filed for declaration and suit property is subject matter, they cannot be permitted to take advantage unless their right is determined. Such being the case at this stage the earlier injunction ordered vide ex-parte is to be continued till disposal of the suit in the interest of justice. Hence, considering these aspects I am of the opinion that, the plaintiffs have proved Point No. 1 and 2 and defendants failed to prove point No. 3. As such I answer Point No. 1 and 2 in the Affirmative and Point No. 3 in the Negative.

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8. Point No. 4. In the result I pass the following:

:ORDER:

I A 2 filed Under Order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant 11 to 17 are restrained by way of Temporary Injunction from cutting any trees in the "B" schedule property till disposal of the suit.

I.A. 7 filed Under Order 39 rule 4 of CPC by defendants 11 to 17 is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected and then pronounced by me in Open Court on this the 9th day of April 2018.)

(Santosh Siddappa Palledh)
Senior Civil Judge & JMFC., Hiriyyur