

ORDER ON IA.II FILED UNDER ORDER XXXIX
RULE 1 AND 2 R/W SECTION 151 OF C.P.C

The learned counsel for the plaintiffs has filed this I.A No.II under order XXXIX rule 1 and 2 of C.P.C., restrain the defendants or anybody under his from cutting or removing any teak wood standing in the application schedule property in any manner by mean of ex-parte ad-interim order of injunction pending disposal of the suit.

2. This application annexed with the sworn affidavit of the plaintiff No.1, wherein he has stated that the main suit is filed for partition and separate possession of the suit schedule properties, which are the joint family undivided properties of the plaintiffs and the defendants. It is further stated that, suit schedule 'A' to 'C' properties contain valuable standing teak wood trees. It is alleged that the defendants made overt acts and preparation to unlawfully cut and remove the said trees without the consent of the plaintiffs. If the defendants succeeds, it will cause irreparable loss and deplete the value of the joint estate. He further stated that the defendants are locally well influenced political having background and based on the political power the defendants has started blackmailing him not to file any suit. If the defendants sells the property then the plaintiff will have to face multiplicity of proceedings. They have got prima facie case as against to the defendants and they have got balance of inconvenience and if the temporary injunction is not granted then he will be put to hardship and injury and consequently if the temporary injunction is granted then there is no hardship and injury will be caused to the other side. Hence, he prays to allow the application.

3. The defendant No.1, 3 and 4 have appeared before this court through their respective counsels but failed to file objection to I.A No.II.

4. Heard the arguments and perused the material placed on record. The following points arisen for my consideration:

1. Whether the plaintiffs have made a prima facie case?

2. Whether the balance of convenience lies infavour of the plaintiffs?

3. Whether irreparable loss will be caused to the plaintiffs, if the injunction is not granted?

4. What order?

5. My answer to the above points are as under:

Point No.1: In the Negative.

Point No.2: Lies infavour of both parties.

Point No.3: Lies infavour of both parties.

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

REASONS

6. POINT NO.1 TO 3: These points are interrelated to each other and finding on point No.1 will have bearing on the other. Hence, to avoid repetition of facts, these points are taken together for common consideration.

7. This suit filed by the plaintiffs against the defendants for the relief of partition and separate possession in respect of suit schedule properties. This court has perused the plaint and records placed before it. It is undisputed that the suit is one for partition where the shares are yet to be adjudicated. Since the character of the property is joint /disputed, the plaintiffs possess a triable right in the suit properties. The subject matter of this application involves standing teak wood trees. Timber of this nature takes decades to mature. If the trees are cut down and removed during the pendency of the suit, the physical character and value of the suit schedule properties will be permanently altered, which cannot be easily compensated in terms of money. Further the relief sought by the plaintiffs IA is similar relief sought in the suit prayer. Hence, there is no absolute necessity to dispose the I.A at this stage. Therefore, under these circumstances this court is of the consider opinion that there was no prima facie case in favour of the plaintiffs, but balance of convenience and irreparable loss will caused to both the parties, if T.I is granted. Therefore, it is good enough to pass an order of status-quo to prevent both the parties. That the both parties shall maintain strict status-quo

regarding the nature and character of the standing timber on the suit properties. Hence, I answered the point No.1 in the Negative and the point No.2 and 3 are lies in favour of both the parties.

8. POINT NO.4: In view of above discussion made in detail, while answering point No.1 to 3, I proceed to pass following:

ORDER

I.A.No.II filed by the plaintiffs under order XXXIX Rule 1 and 2 of Code of Civil Procedure is hereby partly allowed in following terms;

Both parties are hereby directed to maintain status-quo regarding the nature and character of the standing timber on the suit properties till disposal of suit.

Parties shall bear their own costs.

Sd/-

**Senior Civil Judge & J.M.F.C,
Channagiri**