

IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., DHARWAD.

Present: SRI.ANAND S KARIYAMMANAVAR
B.A., LL.B(Hon's)
IV Addl. Senior Civil Judge
& J.M.F.C., Dharwad.

OS No.444/2022

Dated : 4th day of July 2024

Plaintiff/s : Smt.Gouravva W/o Goudappa Mudigouda
and others.

(R/by Sri.B.V.S, Adv)

V/s.

Defendant/s: Ningappa S/o Basappa Kelageri
and others.

(D1 R/ by Sri.S.R.H, Adv)
(D7 & 8 R/by Sri.S.G.H, Adv)
(D2 to 6 Exparte)

PARTIES TO IA NO.X

Applicant/s : Smt.Manjula W/o Shivanand Kyamanakeri
(Org.pl No.5) and others.

V/s.

Opponent/s: Ningappa S/o Basappa Kelageri
(org defs) and others.

ORDER ON I.A.NO.X

The plaintiffs filed this application under Order 39 Rule
and 1 and 2 R/w Section 151 of CPC and sought to issue
interim injunction against the defendants from cutting

standing trees in the suit lands till the disposal of this suit.

2. The plaintiff No.5 filed her affidavit in support of this application and submitted that, she filed this suit against the defendants for relief of declaration to declare the alienation of some of the suit properties by the defendants are not binding on their share and also for the relief of partition and separate possession. Further she submitted that, when the matter was posted for plaintiffs evidence in this case, defendants in order to curtail the rights of the plaintiffs and in order to make illegal gain, they have cut down more than 60 teak wood trees which were standing in the suit properties and they also intending to sell those logs. Further she submitted that, all the plaintiffs are given representation before the Forest Department about the cutting of trees, but Forest Department have not taken any action against them. Further it is submitted that, plaintiffs are having their legitimate share over the suit properties as well as on standing trees in the said suit lands. If the defendants are allowed to cut the trees illegally and allowed to take income of the said trees, then plaintiffs will be put to great loss or injustice. Hence present application is filed.

3. On the contrary, defendant No.1 filed written statement and sought to treat the same as objection to this application and further contended that, Sy No.329/1 and Sy No.329/2 were allotted to late Kallappa and he has grown mango trees as well as teak wood trees in Sy No.329/2. Further it is contended that defendant No.1 not cut the teak wood trees planted in his portion, but high tension wire passes through the land fallen to the share of Kallappa and KEB authorities cut the some of the trees and even KEB authorities have also admitted the cutting of teak wood trees. Further, the defendant No.7 & 8 filed objection to this IA and contended that, defendant No.7 & 8 have purchased the suit property bearing Sy No.329/2 measuring 2 acres 22 guntas and they are bonafide purchaser and they are having right, title and interest in or over the suit property and they are liable to cut the said trees in the suit properties, but the plaintiffs by filing this suit and application, harassing the defendant No.7 & 8 and thereby sought to dismiss the application.

4. I have heard the arguments of both side on IA No.X and perused the material available on record.

5. Now the following points arise for my consideration.

1.	Whether the plaintiffs have made out prima facie case ?
2.	Whether the balance of convenience lies in favour of the plaintiffs ?
3.	Whether irreparable loss would be caused to the plaintiffs, if the instant interlocutory application is not allowed ?
4.	What order ?

6. My answers to the above points are as under:-

Point No.1 to 3:	In Negative.
Point No.4:	As per the final order, for the following:

REASONS

7. **Point No.1 to 3:-** These points are interconnected with each other, as such in order to avoid repetition of facts, they are discussed together.

7(a). The plaintiffs instituted this suit against the defendants for the relief of declaration to declare the alienation of some of the suit properties by the defendants are not binding on their share and also for the relief of partition

and separate possession. In the present application, the plaintiffs seeking interim injunction against the defendants to not cut the standing trees in the suit lands till final disposal of this case. On perusal of the averments made in the affidavit that, the defendants have cut down more than 60 teak wood trees and plaintiffs are also having share over the said teak wood trees. If the defendants are allowed to cut the trees illegally, it is the plaintiffs who will suffer loss than the defendants. Further at the time of arguments, learned counsel for the defendants relied upon a document dated 05.02.2024 issued by Assistant Executive Engineer, KPTCL and said document reveals that, as per the provisions of Indian Electricity Act 1956 and Forest Conservation Act 1987, if any electricity line having capacity of 220 KV pass through any land, then total 35 meters surrounding that cable line an empty corridor should be left. Accordingly, they have intimated Sri.Sangappa K. Kelageri ie., defendant No.3 to cut down the said trees which were obstructing the electricity cable line and plaintiffs have also made application to them to identify the price of the cut down trees and accordingly letter has been issued to Ranger Forest Officer, Dharwad. Further learned counsel for the defendants relied upon one

more document issued by Range Forest Officer dated 12.02.2024 to Assistant Engineer, KPTCL, which reveals that, the Forest Officials have submitted the total price list of the cut down trees and said document reveals that, total 38 teak wood trees found in Sy No.329/1 and 329/2 and the value of the said trees is Rs.1,23,969/-.

7(b). Therefore, on perusal of the material available on record, the defendants have cut down the said teak wood trees as there was obstruction to electricity cable and in order to avoid future incidents, with the permission and directions of the necessary departments, they had cut down the said trees. However, in the present application, the plaintiffs seeking not to cut down any trees standing in the suit lands, but on perusal of the plaint, the plaintiffs also not specifically stated about the trees in suit schedule properties. However, since the suit is one for partition and separate possession and the plaintiffs have right and liberty to claim mense profit and the mense profit can be calculated by fixing the price, under such circumstances, it cannot be considered as plaintiffs will suffer irreparable loss or injury which cannot be compensated by way of cost. Further on perusal of the

material available on record, the defendants have cut down the said trees only in order to avoid future unforeseen incidents due to that electricity cable. Therefore as discussed above, if the plaintiffs are succeeds in trial, they are having rights over the mense profit which can be compensated. Therefore at this stage, no prima facie case is made out and plaintiffs will not suffer irreparable loss or injury if the temporary injunction is not granted and no hardship will be caused to the them. Hence, for the above stated reasons, I have answered **point No.1 to 3 “in Negative”**.

8. **Point No.4:-** For the reasons stated while discussing **point No.1 to 3**, I proceed to pass the following:-

ORDER

***The I.A.No.X filed by the plaintiffs
under Order 39 Rule 1 & 2 of CPC is hereby
dismissed.***

No order as to costs.

(Dictated to stenographer, typed by her, corrected and then pronounced by me in the open court on **4th day of July 2024**)

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For order
14-06-2024

(Order pronounced in the open Court vide separate order)

ORDER

***The I.A.No.I filed under Order 39 Rule 1
& 2 of CPC by the plaintiff is hereby
dismissed.***

No order as to costs.

(Anand S Kariyammanavar)

IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.