

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
HIREKERUR.**

PRESENT : **Smt. Shirin J. Ansari**, B.A.LL.B(Hon's) L.L.M.
Prl. Civil Judge & JMFC.,
Hirekerur.

DATED THIS THE 28th DAY OF NOVEMBER 2014

OS. No. 122/2014.

Plaintiff : 1. Sediappa S/o Sannamallappa
Puttappagowdara,
Age.71, Occ. Agril., R/o. Gundagatti village,
Tq:Hirekerur, Dist: Haveri.
(Pleader By Sri. R.C.Ganigera)

-V/s-

Defendant Gurubasappa S/o Sannamallappa Puttappagowdara,
Age.78, Occ. Agril., R/o. Gundagatti village,
Tq:Hirekerur, Dist: Haveri.
(Pleader By Sri.P.V.Kerudi)

INTER LOCUTORY APPLICATION No. I.

<u>Applicant</u> (Plffs.)	1. Sediya S/o Sannamallappa Puttappagowdara, R/o. Gundagatti village, Tq:Hirekerur, Dist: Haveri.
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-V/s-

<u>Opponent</u>	Gurubasappa S/o Sannamallappa Puttappagowdara,
(Defendant)	R/o. Gundagatti village, Tq:Hirekerur, Dist: Haveri.

:ORDERS ON IA. NO. I:

This is the application filed by the Applicant/plaintiffs U/O. 39 Rule 1 & 2 R/w. Sec. 151 CPC against the defendant No.1 restraining him from cutting down any trees in the suit schedule property and alienating the suit schedule property in many manner till disposal of the suit.

2. The application is supported by an affidavit filed by the plaintiffs, wherein, it is stated that, the original proposcituous of the family were Sannamallappa and his wife Mallavva. Both Sannamallappa and Mallavva have expired leaving behind their children 1. Gurubasappa 2. Shediyaappa 3. Basappa 4. Shiddavva 5. Neelavva. This being the situation defendant No.1 and Basappa have no issues. The said Basappa is expired. The daughter of the Sannamallappa i.e. Shiddavva and Neelavva already married and received their share in the form of cash. They partitioned in the year 1983 between plaintiff and defendants except the suit schedule property. The defendant No.1 has sold the item No.5 schedule property to defendant No.2 and 3 without knowledge of the plaintiff. Hence, it is binding upon the plaintiff in any manner. The defendant No.1 has been acting as a manager of the family from the year 1976 though the defendant No.1 said, he would partitioned family properties but he has not done so. Subsequently they have partitioned family properties in between the plaintiff and defendants and it is the allegation of the plaintiff that he has repaid entire loan obtained by the defendant No.1. When asked for family partition the defendant kept on dragging the matter on one or other reasons to give any share to the plaintiff. Though the in R.S.No.83/11A there are trees Sandal and other trees, in R.S.No.83/11B there are 2 Mango trees, 4 Sagavani tree, 1 jack tree, 22 Neem tree, 5 Ecclesiastic or Neilgherries trees, 2 Tamarind trees along with Bital-nut and Coconut trees.

In R.S.No.83/9A there are Aralimara trees, in R.S.No.76/2A there are 5 Neem trees. The defendant is trying to cut down the trees without any permission or consent of the plaintiff. The plaintiff is entitle for $\frac{1}{2}$ share in the suit schedule property and shown in the suit schedule property among the plaintiff and defendant No.1. If defendants cut down the above-mentioned trees the plaintiff will be put to irreparable loss and injustice which cannot be compensate the in terms of money. Hence, in view of this it is necessary to restrain the defendant No.1 from cutting down the trees and there is a prima facie case and balance of convenience in favour of plaintiff. Therefore on all these grounds the applicant prayed to allow the present application in the interest of justice and equity.

3. The defendants have contended the present application by filing a memo to consider the contents of the written statement as objections to the present application. In the written statement the defendant No.1 has denied the contents of the plaint in toto and specifically contended that the genealogy furnished by the plaintiff is incorrect and the plaintiff is not impleaded the necessary parties i.e. husband and children of Neelavva i.e. Irrappa, Ramappa and Nagappa respectively. There is no cause of action for the suit. There is already partitioned in the year 1983 between plaintiff and defendants and accordingly mutation entries are certified and therefore the plaintiff is estopped from seeking any partition in the suit schedule property. The defendant No.1 has sold the some of the properties of the

joint family to defendant No.2 and 3 for the family necessities i.e. repay the loan made by him for the benefit of the family and said sale also binding on the plaintiff. There is no cause of action for the suit and there is no prima facie case and balance of convenience in favour of applicant. Hence, the defendant prayed to dismiss the application with costs.

4. On the basis of the pleadings made out by the parties, following points will arise for my consideration:

1) Whether the plaintiffs have established a prima-facie case?

2) Whether the balance of convenience lies in favour of plaintiffs?

3) Whether irreparable loss or hardship will be caused to the plaintiffs if the injunction is not granted.

4) What order?

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

<i>Point No.1</i>	<i>: In the affirmative,</i>
<i>Point No.2</i>	<i>: In the affirmative,</i>
<i>Point No.3</i>	<i>: In the affirmative,</i>
<i>Point No.4</i>	<i>: As per final order for the following,</i>

: R E A S O N S:

6. **Point No.1 to 3:** Since these points are inter linked with each other, I have taken them together for the discussion in order to avoid repetition of the facts.

Before embarking upon the discussion as per pleadings made out in the present application I would like to go through the documents produced by the plaintiff and defendants in this regard. The plaintiff has produced the certified copy of the sale deed dated 09-06-1976 and RTC pertaining to the suit schedule properties standing in the name of the defendant No.1 and standing in the name of Siddalingappa, Bharamagowdar. He has also produced the certified copy of the plaint in O.S.No.156/2009 filed by the present defendant No.1 against the present plaintiff, Mallanagowda and Kumar for seeking the relief of declaration and cancellation of the sale deed. He has also produced the certified copy of the written statement filed in the said suit. Photographs standing in the suit schedule properties along with CD. On the other hand the defendant has produced the xerox copy of the

entered into by present plaintiff Sri.Sediyappa Sannamallappa i.e. present plaintiff. This aspect of the matter shows that the property bearing R.S.No.76/2 measuring 1 acre 2 guntas, R.S.No.83/10 measuring 15 guntas, R.S.No.65/1 measuring 2 acres 15 guntas have allotted to the share of Gurubasappa i.e. present defendant No.1. It is also among that newly purchased property has allotted to the share of the present defendant and present plaintiff has no share in the newly purchased property. It was also noticed that all society loan and bank loan has to be repaid by the defendant No.1. For the purpose of the repay the said loan R.S.No.83/11A, 83/11B, 83/9A and

83/20 have been given to the share of defendant No.1. Further the present plaintiff got R.S.No.77/1B measuring 1 acres 2 guntas, R.S.No.83/1 measuring 15 guntas, R.S.No.65/1 measuring 15 guntas, R.S.No.66/4 measuring 4 guntas, R.S.No.71/7B measuring 3-guntas, R.S.No.83/13/2 measuring 3-guntas have fallen to the share of the present plaintiff. He was also directed to pay the society loan. This aspect of the matter shows that there is a partition in between the plaintiff and defendant No.1 and other members of the family has not been made as parties in the present suit. He has also produced the certified copy of the ME.No.1556. The plaintiff also made an application to Range Forest Officer, Hirekerur for not to permit the cutting of any trees standing in the suit schedule properties. On perusal of the documents produced on record it is found that there is also complaint lodged by the present defendant No.1 against the present plaintiff and others before the Range Forest Officer. This aspect of the matter clearly goes to show that there is an intention on the part of the defendants to cut down the standing trees in the suit schedule properties. But according to the defendants the entire family properties have already been partitioned in between plaintiff and defendants and accordingly katha of properties and they are enjoying in their respective shares. This aspect of the matter that whether there is any partition with regard to entire family properties is in matter of trial and required to be final after trial. This aspect of the matter can called out and brought to look after examination of witnesses on both the sides. At this stage of the

proceedings the Court is look in to prima facie case and balance of convenience. An injunction may be granted in the case in which it is just and convenience to do so. The word 'just' and 'convenience' in the statutory provisions does not mean that the Court can grant injunction simply on if convenience is pleaded but mean that the grant a injunction is necessary for the protection of rights or the prevention of suit schedule property, according to the legal principles. Here in this case it is necessary to grant injunction to restraining the defendants from the cutting the trees i.e what has been complained against the defendant. The plaintiff in this case has shown that there is a serious question has arisen as to whether the law has been broken. There is a clear breach of law on the part of the defendants. The application and objections before the Range Forest Officer pertaining to the cutting down of trees clearly shows there is a prima facie case in favour of the applicant. The disputed properties are in danger of being wasted, damaged or alienated by the defendants and defendants are trying to remove and dispossess the properties with an intention to defraud the plaintiff. The defendant is also trying to cause injury in relation to the disputed properties. They shown there is a partition between the plaintiff and defendants in the year 1983. But whether all properties pertaining to the family and all members of the joint family have been allotted the share or not is yet to be found in the course of the trial. Keeping in mind fundamental and basic principles discussed here in above, the Court is of the opinion that the plaintiff has made out the prima facie case though he has

ascertained that his legal rights of the property in the suit which has to be preserved and protected. The plaintiff has also shown that there is a balance of convenience in his favour for grant of injunction. There is a bonafide contest between the parties. The balance of convenience lies in favour of plaintiff in the event of success. Hence, injunction is necessary to be granted. This plaintiff will be put to irreparable loss and injustice if the injunction is not granted. Therefore, in view of this, I answer point No.1 to 3 in affirmative.

7. **Point No.4:** In view of the above discussion, reasons and findings given on point No.1 to 3, I proceed to pass the following :

: O R D E R:

I.A.No.1 filed by the applicant/plaintiffs U/o 39 Rule 1 and 2 R/w Sec. 151 CPC is hereby partly allowed.

The defendant No.1 their men or anybody claiming under them are restrained from cut down any standing trees in the suit schedule properties in any manner by way of temporary injunction till disposal of this suit.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by him, and then corrected signed and pronounced by me in the Open Court, on this the 28th day of November 2014.)

(Shirin J. Ansari)
Prl. Civil Judge & JMFC.,
Hirekerur.