

KAKL300004582021



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

: PRESENT :

Smt. **Lathadevi, G.A.**, B.A.L., LL.B., LL.M.,
Senior Civil Judge & JMFC., Malur.

Dated this 25th day of July, 2023.

:: **O.S. No.333/2021** ::

Plaintiff/s : **Smt. Sharadamma,**
D/o late Munivengappa,
W/o Muniswamy,
Aged about 56 years,
R/a. Kudiyanur Village,
Kasaba Hobli, Malur taluk,
Malur – 563 130.

(Reptd., by Sri.H.T.M., Advocate)

- V/s.-

Defendant/s : **K.M. Shantharaj @**
Shantharajaiah,
S/o late Munivengappa,
Aged about 54 years,

R/a. Kudiyanur Village,
Kasaba Hobli, Malur taluk,
Malur- 563 130.

(Reptd., by Sri.S.A.H., Advocate)

Common orders on IA No.I & II
filed by the plaintiff

U/o 39 Rule 1 & 2 r/w Sec.151 of CPC., dated 28.07.2021

The plaintiff has filed the above IA No.I and II., along with supporting affidavits, seeking injunction order to restrain the defendant **from not to alienate, create charge or creating third party rights over the suit schedule property and not to cut and remove the standing eucalyptus trees over the suit schedule property**, till disposal of the above suit.

2. **In the supporting affidavits, the plaintiff has deposed that,** the above suit is filed for relief of partition and separate possession. That the plaintiff and defendant are the children of late Munivengappa. That the suit schedule property is the ancestral and joint family property of plaintiff and defendant.

3. That Munivengappa has expired. That there is no partition has taken place. That the katha of the suit schedule property has been got mutated in the name of defendant, the

defendant is trying to alienate and cut and remove the standing eucalyptus trees in the suit schedule property.

4. Further contends that, if the defendant alienates the suit schedule property and cut and remove the standing eucalyptus trees over the suit schedule property, irreparable loss and injury will be caused to plaintiff, that plaintiff has made out prima-facie case and balance of convenience lies in her favour. Hence, **prays to allow the above two IAs.**

5. **The defendant has filed the objections to the above two IAs.**, and denied the entire case of the plaintiff. Further has contended that, the defendant's father has expired on 03.08.1997 and that the defendant having succeeded to the suit schedule property by virtue of Will, dated 14.04.1994 and denies the case of the plaintiff and prays to dismiss the above IAs, stating that, the plaintiff has not made out prima-facie case and balance of convenience in her favour. Hence, **prays to reject the above IAs.**

6. Heard both sides and perused the materials available on record.

7. In view of the above rival pleadings, the following points that would arise for my considerations are;

1. Whether plaintiff has made out a prima-facie case?
2. Whether plaintiff proves that, the balance of convenience lies in her favour?
3. Whether plaintiff proves that, if the temporary injunction is not granted as prayed in **IA Nos.I & II**, she will be caused irreparable loss and injury?
4. What order?

7. My findings to the above points are as follows:

Points No.1 to 3: In the **Affirmative**

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

REASONS

8. **Points No.1 to 3:** are interconnected to each other, hence, they have taken up together for consideration, in order to avoid repetition of facts.

9. This is a suit filed by the plaintiff seeking for the relief of partition and separate possession against her brother.

10. In the present case, the plaintiff has produced certified copy of mutation marked at Ex.P1, which reveals that, after the death of father of plaintiff and defendant, the name of defendant has been mutated with respect to suit schedule property. Ex.P2 RTC reveals that, suit schedule property stands in the name of father of the plaintiff and defendant.

11. As per Hindu Succession Act, the daughter is also held as coparcenary and is entitled for coparcenary rights in the Hindu ancestral and joint family properties, but the defendant in the present case denies that, the suit schedule property as the Hindu ancestral and joint family property claims through Will, he having succeeded to the suit schedule property.

12. The exhibits as spoken above reveals the suit schedule property has been standing in the name of father of the plaintiff and defendant. Though, defendant claims by virtue of Will, he having succeeded to the suit schedule property, but the mutation register reveals on death of Munivengappa i.e., father of plaintiff and defendant, katha having been mutated in the name of defendant and not by virtue of Will, which requires a trial, if the suit schedule property is alienated and if the standing eucalyptus trees are cut and removed, the coparcenary right of the

plaintiff will be effected, irreparable loss and injury will be caused to plaintiff.

13. Based on detailed discussions made above, this court is of the opinion that, the plaintiff has made out prima-facie case and balance of convenience does not lies in her favour. Hence, I answer points No.1 to 3 in the **Affirmative**.

14. **Point No.4:** In view of the above discussions and findings to points No.1 to 3, I proceed to pass the following;

ORDER

IA No.I & II filed U/o 39 Rule 1 and 2 r/w Sec.151 of CPC., by the plaintiff are hereby **allowed**.

The defendant is hereby temporarily injuncted,
**from not to alienate and not to cut and remove
the standing eucalyptus trees over the suit
schedule property**, till disposal of present suit.

(Dictated to the Stenographer, transcribed by him, transcript corrected by me and then pronounced in the open court on this **25th day of July, 2023**)

(LATHADEVI G.A.)
Senior Civil Judge & JMFC.,
Malur.