

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 12th day of June - 2024

O.S.No.1617/2022 (Old No.1464/2022)

Plaintiff/s : Smt.Narayanamma

- V/s -

Defendant/s : Sri.Narayanaswamy & Ors.

i. Provision under which the application is filed.	U/o 39 Rule 1 and 2 of CPC.
ii. Relief sought for	Temporary injunction.
iii. The date in which the application is filed	05-06-2024
iv. Number of the application	IA No.4
v. The date on which the objections are filed by different opponents	06-06-2024
vi. The date on which the orders were passed on the said application.	12-06-2024

Orders on I.A.No.4

The plaintiff has filed the above application under Order 39 Rule 1 and 2 of CPC seeking an order of temporary injunction restraining the defendant No.1 to 19, their agents, servants and

others from cutting and remove the standing eucalyptus trees in suit item No.2, 4 and 5 schedule properties till disposal of the suit.

2. In the annexed affidavit it is stated that, the plaintiff and the defendants No.1 to 19 constituted a Hindu undivided joint family and the suit schedule properties are the ancestral and joint family properties and there was no partition among themselves. The defendant No.1 by colluding with defendant No.2 to 19 has mismanaged the affairs of the joint family properties. Hence, plaintiff demanded for partition of her share in the suit schedule properties, the defendants refused to effect partition. Thereafter, plaintiff came to know about the gift deed and sale deed executed by the defendants. Now, the defendants No.1 to 19 taking advantage of the revenue records standing in their names are making hectic and illegal efforts to cut and remove the eucalyptus trees in the suit schedule properties. The defendants have no independent right, title over the suit schedule properties to sale or cut and remove the trees. If the defendants are allowed to do so, the plaintiff will be put to great loss and injustice and it further leads to multiplicity of

proceedings between the parties. Hence, prays to allow the application.

3. The defendant No.1 and 3 filed objections to the application by denying the statement made by the plaintiff and further contended that the said Krishnappa had no ancestral properties to his account. The children of Krishnappa had purchased some of the suit schedule properties by investing huge money and some properties were granted in their names. Further, the revenue records were mutated in their names and they were paid taxes to the same. They have raised eucalyptus trees in the portion of the properties and thereby they have got right over the said property. When the suit for partition itself is not maintainable, question of granting an order of temporary injunction against the true owner does not arise at all. Further, the plaintiff has not produced any documentary evidence to prove that the suit schedule properties are the ancestral and joint family properties. Hence, plaintiff is not entitled for any relief against true owners. Hence, prays to reject the application with costs.

4. Heard arguments. Perused the records.

5. Based upon the above contentions of the plaintiff and defendants, following points arise for consideration:

1. Whether the plaintiff has made out prima facie case in her favour?
2. Whether the balance of convenience lies in her favour?
3. If temporary injunction is not granted who will suffer great hardship and injustice?
4. What order?

6. The court findings on the above points are as under:

Point No.1 to 3 : In the Affirmative,

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

REASONS

7. **Point No. 1 to 3:-** These points are inter-linked with each other. Therefore, in order to avoid the repetition of facts, they are taken together at one stretch for common discussion.

The above suit is filed by the plaintiff against the defendants for partition and separate possession in respect of the suit schedule properties and for declaration that the gift deed dated 23-8-2019 is not binding on her share.

8. From the above application, the plaintiff is claiming an order of temporary injunction restraining the defendants from cut and remove the standing eucalyptus trees grown in suit item No.2, 4 and 5 properties.

9. The defendants denied the existence of joint family between the parties and further taken a contention that the plaintiff is not entitled for any share in the suit properties as they are self acquired properties of defendants.

10. The plaintiff in support of her case, she has produced the genealogical tree which is not disputed by the defendants. Further, she has also produced RTC and mutation extracts and sale deed. On perusal of the mutation and RTC extracts which clearly goes to show that earlier the suit schedule properties are in the name of father of the plaintiff by name Krishnappa. After his death, the katha was mutated in the name of defendants under powthi varasu.

11. The defendants through their defense taken a specific contention that the said Krishnappa had no ancestral

properties to his credit. But on perusal of the RTC extracts pertaining to Sy.No.2, 33 and 48 which clearly goes to show that the said properties were in the name of Krishnappa.

12. Further, at the time of argument, the counsel for the defendants argued that the eucalyptus trees were grown by them in suit item No.2, 4 and 5 schedule properties. But, in order to show that the said properties are self acquired properties of the defendants or the said properties are purchased from the joint family nucleus or not, it requires a full fledged trial. As the suit is filed for partition and separate possession, in order to protect the interest of the plaintiff and to avoid multiplicity of proceedings between the parties, it is just and necessary to restrain the defendants from cut and removing the standing trees from the suit schedule item No.2, 4 and 5 properties.

13. Furthermore, the defendants have not produced any documents to show that they have partitioned among themselves. At this stage, the plaintiff has made out prima facie case and balance of convenience is also lies on her favour. Further, the plaintiff has produced the copy of FIR lodged by

the plaintiff against the defendants on 4-6-2024 and the photographs which shows that the defendants have caused obstruction and also assaulted the plaintiff. Further, as per photographs, the defendants were tried to cut and remove the eucalyptus trees. Therefore, if an order of temporary injunction is not granted, the plaintiff will be put to great loss and injustice rather than the defendants. Hence, on the above said reasons I, answer point No. 1 to 3 in the “**Affirmative**”.

14. **Point No.4 :-** In view of the aforesaid findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.4 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants No.1 to 19 are hereby restrained from cut and removing the standing eucalyptus trees grown in suit schedule item No.2, 4 and 5 properties pending disposal of the suit.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 12th day of June 2024.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

Order pronounced in the open court vide separate :

ORDER

I.A.No.4 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants No.1 to 19 are hereby restrained from cut and removing the standing eucalyptus trees grown in suit schedule item No.2, 4 and 5 properties pending disposal of the suit.

No order as to costs.

For issues and enquiry U/Sec 89 of CPC, Call on:

Senior Civil Judge & JMFC,
Hosakote.

