

KAMS500016672022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : B. Anupama Lakshmi, B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 5th day of December 2023

O.S./115/2022

Plaintiffs : Smt. Rani and another
-V/s-

Defendants : S.D.Mahadevappa and others

I.A. I

Applicant : Smt. Rani

-V/s-

Opponents : S.D.Mahadevappa and others

ORDERS ON I.A. I UNDER ORDER 39
RULES 1 & 2 R/W SECTION 151 OF CPC

The plaintiffs have filed the I.A. seeking temporary injunction against the defendants restraining them from cutting and removing the standing trees in the items 1, 3, 4 and 5 suit schedule properties during the pendency of the suit when the case was posted for cross-examination of P.W.1.

2. The defendant No.2 filed counter statement.

3. Heard both sides. Perused the pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the plaintiffs have made out a prima facie case ?
2. Whether the plaintiffs have got balance of convenience in their favour ?
3. Whether the plaintiffs will be put to irreparable injury if the temporary injunction is not granted ?

4. What order ?
5. The above points are answered as follows :-
- Points No.1 to 3 : In the affirmative
- Point No.4 : As per final order
for the following:-

REASONS

6. **Points No.1 to 3**:- These points are taken up together for discussion as they are interconnected with one another and to avoid repetition.

7. The plaintiffs have instituted the suit for partition and separate possession of suit schedule properties. Defendant No.1 is the father-in-law of plaintiff No.1, defendants 2 and 4 are the son and the daughter of defendant No.1, plaintiff No.2 is the minor son of plaintiff No.1. Suit schedule properties are said to be the ancestral properties of the plaintiffs and the defendants and they are in joint possession and enjoyment of the said properties.

8. Case of the defendant No.2 is that, after the death of the husband of the plaintiff No.1 she along with her son went to her paternal home and never came back to the matrimonial home, thereafter oral partition was effected and a certain portion of suit schedule properties was fallen to the share of plaintiffs, as such the plaintiffs are not entitled for any share in the suit schedule properties.

9. At present the plaintiff No.1 has sought for the relief of temporary injunction restraining the defendants from cutting and removing the standing trees in the items 1, 3, 4 and 5 suit schedule properties. Case of the plaintiffs is that, in the absence of plaintiff No.1 the defendants have illegally cut and removed 4 valuable neem trees in the item No.5 suit schedule property. In case the defendants 1 and 2 continue their alleged illegal act plaintiffs will suffer great loss.

10. On the other hand case of the defendant No.2 is that, 2 acres of land out of 2.38 acres in item No.3 property

fell to the share of plaintiffs. Other properties fell to the share of children of defendant No.1. The plaintiffs have already cut and removed the standing trees in the item No.3 suit schedule property. The defendants have cut and removed the trees for their own use and removed them to sell them for their benefits.

11. Plaintiffs have produced photographs, as per which certain trees were cut and removed. Whether the said trees stood in the suit properties or not is not forthcoming. However learned counsel for the defendants argued that, the trees which have fallen in the suit properties have been removed.

12. Be that as it may. As per the affidavit of the plaintiff No.1 there are standing trees in the items No.1, 3 to 5 suit schedule properties. In case the standing trees are cut and removed everyone will suffer hardship, because by removing the trees there will be erosion of soil, scarcity of rain causing irreparable loss to the people. In particular the plaintiffs will suffer hardship because they have

contended that suit schedule properties are the ancestral properties and they have been in joint possession and enjoyment of the properties along with the defendants. Though defendant No.2 contended that there was oral partition, the said aspect requires trial to be proved. Such being the case till the conclusion of trial to maintain statusquo regarding the properties and the trees it is necessary to restrain the defendants from cutting and removing the standing trees in the items 1, 3 to 5 of the suit schedule properties. Therefore at this juncture this court is of the view that the plaintiffs have made out a prima-facie case and balance of convenience lies in their favour and they will suffer hardship if temporary injunction is not granted in their favour. Hence, **points No.1 to 3** are answered **in the affirmative**.

13. **Point No.4:-** In view of the findings on the points No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A.I filed by the plaintiffs under Order 39 Rules 1 and 2 r/w Section 151 of CPC is allowed.

Defendants are restrained from cutting and removing standing trees in items 1, 3 to 5 of suit schedule properties till disposal of the suit.

(Dictated to the Stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 5th day of December 2023).

(B. Anupama Lakshmi)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open court
(vide separate order)**

ORDER

I.A.I filed by the plaintiffs under Order 39 Rules 1 and 2 r/w Section 151 of CPC is allowed.

Defendants are restrained from cutting and removing standing trees in items 1, 3 to 5 of suit schedule properties till disposal of the suit.

Senior Civil Judge, Nanjangud.