



IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT:MAGADI

Present:

Sri. Shivakumar R., B.A.L., LL.B.,
Addl. Senior Civil Judge & JMFC., Magadi

DATED: THIS THE 3rd DAY OF JUNE, 2025
O.S.No.6/2016

Plaintiffs : 1. Smt. Jayalaxmamma,
W/o. Late. Honnaiah L.,
Aged about 62 years,

2. Smt. H. Manjula,
D/o. Late. L. Honnaiah,
Aged about 46 years,

3. Sri. H. Ramesha,
S/o. late L. Honnaiah,
Aged about 44 years,

4. Smt. Kamala,
D/o. late L. Honnaiah,
Aged about 42 years,

5. Smt. H. Prema,
D/o. late L. Honnaiah,
Aged about 40 years,

6. Sri. H. Ravi Kumara,
S/o. late L. Honnaiah,
Aged about 38 years,

7. Sri. Raghavendra,
S/o. late L. Honnaiah,
Aged about 30 years,



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All are R/at: Kannasandra,
Madigondanahlli Post,
Kudur Hoblil,
Magadi Taluk.

(P1 to 4, 6 & 7 by **Sri. M.R.R.**, Advocate)
(P5 by **Sri. T.K.H.**, Advocate)

-V/s-

- Defendants** :
1. Smt. Sakamma,
W/o. Late. Ganga Honnaiah,
Aged about 90 years,
 2. Sri. Rangaswami,
S/o. Late. Gangahonnaiah,
Aged about 60 years,
 3. Sri. Murthy,
S/o. Late. Gangahonnaiah,
Aged about 48 years,
 4. Smt. Muniyamma,
W/o. Late. Puttaiah,
Aged about 70 years,
Since dead by her L.Rs.,
 - a. Smt. Rangamma,
W/o. Late. Honnaiah,
Aged about 55 years,
R/at: Aladakatte Village,
Huthridurga Hobli,
Kunigal Taluk,
Tumkur District.
 - b. Smt. Jayamma,
W/o. Narasimhamurthy,



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Aged about 53 years,
R/at: Veerapura Village,
Sompura Hobli,
Nelamangala Taluk.

c. Smt. Kamala,
W/o. Siddalingaiah,
Aged about 51 years,
R/at: Aladakatte Village,
Huthridurga Hobli,
Kunigal Taluk,
Tumkur District.

d. Smt. Yashodha,
W/o. Kalaiah,
Aged about 49 years,
R/at: Aladakatte Village,
Huthridurga Hobli,
Kunigal Taluk,
Tumkur District.

5. Smt. Ningamma,
W/o. Late. Halerangaiah,
Aged about 60 years,
6. Sri. Rangaswami,
S/o. Late. Halerangaiah,
Aged about 50 years,
7. Sri. Srinivasa,
S/o. Late. Halerangaiah,
Aged about 48 years,
8. Smt. Susheelamma,
D/o. Magadi Rangaiah,
Aged about 58 years,



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9. Sri. Narasimha Murthy,
S/o. Late. Magadi Rangaiah,
Aged about 53 years,
10. Sri. Rangaswami (Naga),
S/o. Late. Magadi Rangaiah,
Aged about years,

All are R/at: Aladakatte Village,
Madigondanahlli Post,
Kudur Hobli,
Magadi Taluk.

11. Sri. Shashidhara,
S/o. Late. Chikkahanumaiah,
Aged about 62 years,
R/at: Arishinakunte,
Solur Hobli, Magadi Taluk,
Ramanagara District.
12. Sri. Gangavenkatesh,
S/o. Late. Ganganarasaiah,
Aged about 65 years,
R/at: Arishinakunte,
Solur Hobli, Magadi Taluk,
Ramanagara District.

(D1 **Dead**)(D2, 3 & 5 to 10 by Sri. **M.V.S.**, Advocate)(Defendant No.4(a to d) **Exparte**)(D8 & 10 by Sri. **M.Y.L.**, Advocate)

ORDER ON IA NO.14 U/O.39 R.1 & 2 of C.P.C.,

The present application has been filed by defendant no.7 & 9 U/o.

XXXIX rule 1 and 2 R/w. Sec.151 of CPC praying to temporarily restrain



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the plaintiff, her agents, servants, followers, henchmen, supporters, power of attorney holder or anybody claiming through her from not to cut and remove the standing trees which are situated in the application schedule property till disposal of suit.

2. The I.A., supported with the affidavit of the defendant No.7. The defendant No.7 has sworn the affidavit on behalf of defendant No.9 also. It is stated in the affidavit that, the land bearing Sy.No.26/1 totally measuring 18 acres 11 guntas including karab land measuring 1.07 guntas, originally belonged to one Lingaiah S/o. Honnappa. Subsequently, the government acquired land measuring 8 acres 20 guntas in Sy.No.26/1. Thus, Lingaiah remained to be in possession of the remaining land. The said Lingaiah has 9 children. During the life time of Lingaiah partition was effected vide *Panchayathi Palupatti* dated: 14.06.1961. It is further stated that, there are valuable trees situated in the suit schedule properties i.e., marabosa, nilgiri, bagi, jackfruit trees and other jungle trees.

3. It is further stated that, the said Lingaiah and his sons have got partition in the said suit survey number to an extent of 9 acres 31 guntas and divided into four bits. After the said partition, the sons of Lingaiah were in possession and enjoyment of their respective shares. The husband

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of the defendant No.8, the father of defendant No.9 and 10 namely Magadi Rangaiah has sold 0.25 guntas of land Uddeinkoola Bare, which was allotted to him to his brother Halerangaiah i.e., defendant No.5 husband and father of the defendant No.6 and 7 under a registered sale deed vide Register No.696/1991-92. As such the defendant No.5 husband was in possession and enjoyment of the land totally measuring to an extent of 3 acres 5 guntas, but being the back of the third defendant, the Khatha made only to the extent of 1 acre 35 guntas under different MR No. 3/1988-89 and MR No. 5/1994-95 and MR No. 1/1991-92. The first defendant husband and father of the defendant no. 2 and 3 by name Gangahonnaiah's name is in way finds in the RTC and no mutation or Khatha made, but he was in possession and enjoyment of the property which was allotted to him under the above referred Panchaythi Palupatti till his death. The husband of the first defendant died somewhere in the year 1991, after the death of Gangahonnaiah, myself and the defendant no. 1 to 3 have inherited and succeeded the estate of Gangahonnaiah and they are continued in possession and enjoyment of the property in suit schedule property. That the defendant no. 8 has filed the original suit with respect to the property allotted to her share in the above referred Panchaythi

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Palupatti against the plaintiff before the civil judge junior division and JMFC at Magadi. In the said suit the suit summons has been duly served on the plaintiff, but she has not appeared before the court. Hence she was placed exparte and the said suit was finally decreed. That the plaintiff with an intention to knock off the property of 5th defendant husband Halerangaiah and attempted to interfere with the possession of the 5th defendant's husband. By that time the plaintiff and her children have attempted to murder me and I have lodged a complaint before the jurisdictional Kudur police in crime No. 259/2009 dated 13-9-2009 for the offences punishable under section 143, 504, 323, 324, 506, 307 read with section 149 of IPC and they were arrested and remanded to the judicial custody. The said criminal case is also pending before the court. That the plaintiff suppressed the material true facts before this court and filed a false and frivolous suit just with an intention to knock off the property for one or other manner. The plaintiff cannot maintain the suit alone since her children are not made as party in the suit. The plaintiff is not entitle for any relief and she is not in possession and enjoyment of the suit schedule property. On the basis of the alleged revenue entry the plaintiffs are making arrangements to alienate the application schedule property to the



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third parties and also trying to cut and remove the standing tree Bilwara, Neelagiri, jack fruits, Muthukada tree, Honge (Marbosa), Bagi and other jungle trees. The defendant No.7 & 9 being the helpless person not in a position to resist the illegal act of the plaintiff. Hence, this application.

4. The I.A., copy served to the other side. The plaintiff has filed the detailed objections and resisted the I.A., filed by the defendant No.7 & 9 and interalia contended that, the very application is not maintainable against the plaintiffs. The defendant no.7 already filed IA under order 39 rule 1 and 2 read with section 151 of code of civil procedure against the plaintiffs by praying this Hon'ble court restraining the plaintiffs or their agents or anybody through them from interfering with the possession and enjoyment of the suit schedule property. The said application was contested on merits and the plaintiffs have filed the detailed objections. So this court was pleased to reject the application filed by the defendant no. 7 on 1-4-2024. So the present application is not maintainable and the same is liable to be dismissed in limine

5. It is further contended that, the defendant no.7 and 9 are not in possession of the suit schedule property and they have no right over the same and they have no right to file this application against the plaintiffs

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and the same is liable to be dismissed in limine. It is contended that, the plaintiffs are the absolute owners and they are in possession and enjoyment of the suit schedule property and the trees in the suit schedule property as per the schedule given in the plaint. It is further contended that, the defendant no.7 and 9 have no right to question the plaintiffs to enjoy the suit schedule property and the trees and they are not entitled for temporary injunction order. The defendant no. 7 and 9 have to contest the case on merits and to have the decision according to law. The application is barred by limitation and the defendant no.7 and 9 filed this application only to drag the proceedings and kill the precious time of this Hon'ble court. There is no ground to allow the application. Under these circumstances if this Hon'ble court dismissed the application with exemplary cost no hardship or injury will be caused to the defendant no.7 and 9, on the other hand if the application is allowed, this plaintiff will be put to great hardship and injury will be caused to them which cannot be compensated by any means. With these grounds, the plaintiff prays to reject the application.

6. Heard arguments of plaintiff and defendant No.7 & 9.

7. Considering the contentions of the counsel, following points arise



for my consideration.

1. Whether defendant no.7 & 9 have made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of defendant No.7 & 9?
3. Whether defendant no.7 & 9 will suffer irreparable injury if temporary injunction is not granted?
4. What order?

8. My findings for the above points are as follows.

- | | | |
|------------|---|--|
| Point No.1 | : | In the Negative |
| Point No.2 | : | In the Negative |
| Point No.3 | : | In the Negative |
| Point No.4 | : | As per final order
For the following; |

REASONS

9. **POINT NO.1 to 3:-** As these points are interconnected with each other, taken up together for common discussion to avoid repetition of facts. The aforesaid suit is for declaration, permanent injunction and other consequential reliefs. I have already narrated in brief what is the case of defendant No.7 & 9 and what is the case of the plaintiff is. The defendant No.7 & 9 have filed the aforesaid application praying for restraining the



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plaintiffs and their agents or any body claiming through them from not to cut & remove the standing trees in respect of suit schedule properties. I have perused the materials placed on record and also documents and photographs. The preliminary question that arises for my consideration is whether the defendant can seek for the relief of restraining the plaintiff from interfering with the possession of defendant No.7 & 9.

10. Order 39 Rule 1 reads as follows;

"1. Cases in which temporary injunction may be granted: Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to ¹[defrauding] his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the



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purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property for dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders."

11. The relief of granting injunction not to dispossess can be granted only against the defendant, in favour of plaintiff as per O.39 R.1(c) of C.P.C.

12. The Hon'ble High Court of Karnataka in ***Shakunthamma v. Kanthamma***, 2014 SCC OnLine Kar 12022 : ILR 2014 Kar 6025 : AIR 2015 Kar 13 : (2014) 4 KCCR 3113 : (2015) 1 ICC 376 : (2015) 2 AIR Kant R 142 : (2015) 2 Kant LJ 529 : (2015) 2 KLT (SN 82) 72 : (2015) 1 RCR (Civil) 441 : (2015) 2 CCC 541 : (2015) 3 Civ LT 275 at page 6052 has stated as under;

"33. The correct legal position as is clear from the statutory provision is as under:

(i) Both the plaintiff and the defendant can maintain an application under Order XXXIX Rule 1(a) of the Code for the reliefs set out in the said provision;



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(ii) Insofar as relief under Order XXXIX Rule 1(b) and (c) is concerned, such a relief is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit.

However it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39 Rule 1(b) and (c) of the Code.

(iii) In cases which do not fall under Order XXXIX Rule 1 of the Code, the Court has the inherent jurisdiction to grant the relief of injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of the court and nothing in this Code shall limit or otherwise affect such inherent power of the court."

13. The ratio laid down in the aforesaid decision is aptly applicable to the present case on hand. In view of the aforesaid Judgement, this court consider view that, TI cannot be granted in favour of defendant No.7 & 9. Hence, I answer Point No.1 to 3 in the Negative.

14. **POINT NO.4:** In view of reasons on point No.1 to 3, I proceed to pass the following,

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ORDER

**IA No.14 U/O.39 Rule 1 and 2 of C.P.C.,
filed by defendant No.7 & 9 is hereby rejected.**

Parties to bear their own cost.

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **3rd day of June, 2025.**)

**(Shivakumar R.,)
Addl. Senior Civil Judge & JMFC.,
Magadi.**