



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

Present:

**Sri. Sandeep S. Reddly, LL.M,
Addl. Senior Civil Judge & JMFC., Magadi**

DATED: THIS THE 20th DAY OF FEBRUARY, 2024
O.S.No.100/2014

Plaintiff : Sri. Chandrappa,
S/o. Late. Nanjundaiah,
Aged about 45 years,
R/at: Yelachaguppe Village,
Tavarekere Hobli,
Bangalore South Taluk.

(By **Sri. V.H.R.** Advocate)

V/s

Defendants : 1. Sri. Honnappa & 45 others.

(D1 to 6 by **Sri. P.T.H.** Advocate)
(D7, 22, 24 & 25 by **Sri. P.K.** Advocate)
(D8 by **Sri. G.R.** Advocate)
(D9, 15, 16, 28 to 33 by **Sri. N.K.** Advocate)
(D13, 14, 18 & 35 **absent**)
(D5(b), 21 (a to d), D43 to 45 **Exparte**)
(D46 by **Sri. K.H.P.** Advocate)

ORDER ON IA NO.29

The plaintiffs have filed the aforesaid suit praying for the relief of partition, declaration, separate possession and consequential reliefs.



2. The I.A.No.29 is filed by the plaintiffs U/O.XXXIX R.1 & 2 of C.P.C., praying for an interim order of temporary injunction restraining the defendant No.7 and his agents or anybody claiming through him from cutting and removing the standing trees which are existing in item No.1 to 4 of the suit schedule properties.

3. In the accompanying affidavit to I.A.No.29 the plaintiffs state that, item No.1 to 4 suit schedule properties totally measures 5 acres & 32 guntas of land and it originally belongs to defendant no.1 to 7. That, the defendants have colluded and created revenue records in their names. That, there are 50 silver trees which are aged 20 to 25 years in item No.1 to 4 of the suit schedule properties. That the defendant No.7 was trying to cut and remove the trees and hence have filed the aforesaid application praying for the relief of interim temporary injunction.

4. The defendant No.7 has filed the objections to the aforesaid application. In the said objections the defendant No.7 states that, the facts stated by the plaintiff is not true. That, no trees were cut in the schedule properties. That, defendant No.7 is not in possession of item No.2 to 4 of



the schedule properties. That, the photos produced by the plaintiffs is not true and correct and hence prays for rejecting the aforesaid application.

5. Heard learned advocate for plaintiffs and defendant No.1 to 7.

6. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether plaintiffs have made out prima-facie case for grant of temporary injunction?

2. Whether balance of convenience is in favour of the plaintiffs?

3. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted?

4. What order?

7. 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

8. **POINT NO.1:-** It is the case of the plaintiffs that, defendant No.7 was cutting and removing the trees in the item No.1 to 4 of suit schedule properties. The plaintiff has submitted that, defendant No.7 is cutting and removing the trees in item No.1 to 4 of the schedule property.

9. The defendant No.7 has appeared before the court and has filed objections stating that, he is not interested in the properties mentioned at item No.1 to 4 of the plaint. The defendant No.7 has produced the mutation register extract bearing No.4/1991-92, M.R.No.2/1994-95 and M.R.No.3/1990-91 and M.R.No.91/83-84 to show that the property was already partitioned earlier amongst the joint family members.

10. The defendant No.7 has also produced the RTCs., pertaining to Sy.No.2/1, Sy.No.2/2, Sy.No.2/3, Sy.No.2/4 to show that, the RTCs., pertaining to item No.1 to 4 stands in the name of Sri. Shivakumar, Sri. Chandrappa, Sri. Honnappa, Sri. Honnagangaiah, Sri. Paramshivaiah and Smt. Thimmamma. He has further produced the RTCs., pertaining to Sy.Nos.2/5, 2/6, 2/7 and 80/2 to show that, the land in which defendant No.4 is in possession is not item No.1 to 4 of the suit schedule properties.



11. The khata with respect to item No.1 to 4 of the suit schedule properties apparently does not stand exclusively in the name of defendant No.7. Further, defendant No.4 has himself stated that, the said survey numbers are standing in the name of other family members. This being the case, the plaintiff ought to have sought the relief against the persons who is in possession of the said schedule properties.

12. The plaintiff has produced the photographs to show that, there are trees in the schedule properties. However, the khata does not reflect the same. It can further be seen that, the silver trees are existing in Sy.No.2/3 of Yelachanahalli Village, which apparently is not in possession of the defendant No.7. Hence, the relief sought against defendant No.7 when the khata is not standing in his name cannot be accepted. The rest of the family members are apparently on the record. The plaintiffs could have filed the aforesaid application against the appropriate parties. Hence, the plaintiff has not made out a prima-facie case. Hence, I answer Point No.1 in the Negative.

13. **POINT No.2 & 3:-** As these points are interconnected with each other, taken up together for common discussion to avoid repetition of facts.



14. The plaintiffs have stated that, the aforesaid suit is a suit for partition. That, the plaintiff also has right over the schedule properties by virtue of the properties being joint family properties.

15. The defendants on the other hand, had contended that, there was partition amongst the parties in the year 1983-84 as per M.R.No.41/83-84. The defendants clearly contend that, the partition has taken place. The plaintiff on the other hand is claiming his share in the joint family properties. All the joint family members are made party to the aforesaid suit. The relief claimed is against defendant No.7 to whom the item No.1 to 4 is not related. Further, the RTCs., produced does not disclose the existence of trees. Hence, the balance of convenience does not lie in favour of plaintiff and plaintiffs has not made out hardship. Hence, I answer point No.2 and 3 in the Negative.

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



ORDER

**IA No.29 U/O.39 Rule 1 and 2 of C.P.C.,
filed by plaintiffs is hereby rejected.**

Call on to hear by 18.03.2024.

(Dictated to the Typist directly on the computer, typed by her,
corrected by me and then pronounced in the open court on this the **20th**
day of February, 2024.)

(Sandeep S. Reddy)

**Addl. Sr. Civil Judge & JMFC.,
Magadi.**