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

O.S.No.60/2015

**Present: Sri.Hanumanth Satwik.,
LL.M,
Addl. Sr. Civil Judge & JMFC. Magadi.**

DATED : THIS THE 7th DAY OF MARCH, 2023

Plaintiff :- Sri. Chikkachennaiah,
S/o. Late. Kempanarasaiah,
Aged about 61 years,
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

(By Sri. **T.H.A.**, Advocate)

--V/s--

Defendants :- 1 Sri. Doddachannaiah,
S/o late Kempanarasaiah,
Aged about 64 years,
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

2. Smt. Ganganarasamma,
W/o. Late. Gangadharaiah,
Aged about 59 years.

3. Sri. Shivaramu,
Since dead by his L.Rs.,

(a) Nagarathnamma,
W/o. Late. Shivaramu,
Aged about 47 years,

(b) Pramoda,
S/o. Late. Shivaramu,
Aged about 24 years.

(c) Vinoda,
S/o. Late. Shivaramu,
Aged about 21 years,

(d) Chandana,
D/o. Late. Shivaramu,
Aged about 18 years,

D2 and D(a to d) are
R/at: Rajivgandhinagar,
1st Main Road, Nyanabharathi,
Ward No.129, Govindarajnar,
Opp. Chamundeshwari Temple,
Bangalore – 91.

4. Maranna,
S/o. Late. Kempanarasaiah,
Aged about 54 years.
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

5. Sri. Ganganna,
Since dead by his L.Rs.,

(a) Smt. Bhagyamma,
Since dead by her L.Rs.,

(a)(1) Sri. Shashi,
S/o. Marigowda,
Aged about 26 years,

(a)(2) Suman,
D/o. Marigowda,
Aged about 24 years,

(a)(3) Chethan,
S/o. Marigowda,
Aged about 22 years,

6. Sri. Chandrashekhar,
Since dead by his L.Rs.,

(a) Smt. Sunanda,
W/o. Late. Chandrashekhar,
Aged about 42 years,

(b) Sri. Manoj,
S/o. Late. Chandrashekhar,
Aged about 18 years,

(c) Vinutha,
S/o. Late. Chandrashekhar,
Aged about 15 years,

D5(A)(1) to 5(A)(3) and D6(A) to D6(c)
are R/at: No.104, 1st Cross, Kottigepalya,
Magadi Main Road,
Bangalore – 91.

7. Smt. Manjula,
W/o. Mangalesh,
Aged about 32 years,
R/at: No.54, 8th Cross,
Magadi Main Road,
Kottigepalya, Bangalore – 99.

8. Sri. Kempanna,
Since dead by his L.Rs.,

(a) Smt. Laxmamma,
W/o. Late. Kempanna,
Aged about 68 years,

(b) Smt. K. Umadevi,
D/o. Late. Kempanna,
W/o. Jayanna,
Aged about 45 years,

(c) Sri. K. Chandrashekhar,
S/o. Late. Kempanna,
Aged about 43 years,

(d) Sri. K. Maregowda @ Shashi,
S/o. Late. Kempanna,
Aged about 41 years,

(e) Smt. K. Nagarathna,
D/o. Late. Kempanna,
W/o. Ramakrishna,
Aged about 40 years.

D8(a to e) are R/at:
No.150/3, Laxmamma Building,
Sallapuradamma Extension,
2nd Cross, Sunkadakatte,
Bangalore – 91.

9. Smt. Renukamma,
W/o. Doddachannegowda,
Aged about 50 years,
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

(D1, 2, 3(a to d), D5(a1) & D9 by Sri. **R.S.** Advocate)
(D6(a), 7, 8(a to c) are placed **Exparte**)

ORDER ON IA NO.11

The present suit is for declaration and for partition & separate possession.

2. The plaintiff filed the present application U/o.39 Rule 1 and 2 r/w. Sec.151 of C.P.C., praying this court to restrain defendant No.1, 2, 3(a to d) & 4 from selling or cutting the standing tress present in 'B' schedule property bearing Sy.No.15/2. It is the case of the plaintiff that 'B' schedule property bearing Sy.No.15/P2 is measuring 2 acres 20 guntas. It consists of 60 coconut trees, 60 arecanut trees, 4 sweet neem trees, hebbevo tree, jackfruit tree, 5 teakwood trees, 4 mango trees, tamarind tree, 4 banyan trees, basri tree, 40 seebe trees. The worth of the said trees is more than Rs.10 lakhs. The defendants without taking permission from the forest department are trying to cut and sell the said trees. In this regard, the plaintiff prays as above.

3. Defendant no.2 to 7 filed objections to the application denying the application averments. The defendants contended that in the present application two reliefs have been sought. As such, the present application is not maintainable. There are no pleadings

about existence of the trees as alleged in the present application. The RTC of land bearing Sy.No.15 of Sankighatta Kaval Village Thippasandra Hobli, Magadi Taluk shows that the property is measuring 8 acres 4 guntas and land to an extent of 1 acre 12 guntas is mutated in the name of defendant no.1. Further, the land measuring 1 acre is mutated in the name of defendant no.2. They took the contention of prior partition. The RTC of the year 2020-21 of the land bearing Sy.No.15 shows that it has been amended. Therefore, without taking amendment, the plaintiff is not entitled to get the relief with respect to land bearing Sy.No.15/P2. Further, the land bearing Sy.No.15/P2 is not a continuing survey number. It is subsequently phoded as Sy.No.15. The plaintiff did not take any amendment in the plaint. On this ground, the plaintiff is not entitled for the reliefs sought for. So also, the RTC of the land bearing Sy.No.15 does not show about existence of any kind of trees over the suit schedule properties. The plaintiff did not produce any prima-facie documents to show the existence of trees as alleged in the application. There are no such kind of trees situated in land bearing Sy.No.15/2. The said survey number is totally measuring 8 acres 4 guntas and other villagers are also jointly cultivating the said property. There is no

specific identification for the said land. In this regard, defendant no.2 to 7 pray to reject the application.

4. Heard arguments of both counsel.

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

1. Whether plaintiff has made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of the plaintiff?
3. Whether plaintiff will incur irreparable injury if temporary injunction is not granted?
4. What order?

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

Point No.1: In the negative,

Point No.2: Does not arise for consideration,

Point No.3: Does not arise for consideration,

Point No.4: As per final order.

For the following,

REASONS**POINT NO.1:-**

7. It is the case of the plaintiff that one Kempaiah is the Propositus of their family. The said Kempaiah has a son by name Kempanarasaiah. Kempanarasaiah has two wives by name Huchamma and Huchamma. The wives of Kempanarasaiah are no more. He and defendant no.1 to 4 are the children of Kempanarasaiah through his second wife Huchamma. The said Kempanarasaiah has two sons through his first wife Huchamma by name Ganganna and Kempanna. They are not alive. Bhagyamma, Chandrashekar, Hanumantha, Manjula are the children of Ganganna and Jayamma. The wife of Ganganna by name Jayamma and their daughter are no more. So also, the son of Ganganna by name Chandrashekar is also no more. The another son of Ganganna by name Hanumantha died issues. Manjula is defendant no.7. The Kempanarasaiah and Huchamma has a son by name Kempanna. The said Kempanna is also no more. Lakshamma, K. Umadevi, K. Chandrashekar, K. Maregowda, K. Nagarathna are the L.Rs., of Kempanna. One K. Somashekar, the son of Kempanna, died issueless. Defendant no.9 is the wife of defendant no.1. The suit schedule properties are the joint and

ancestral properties of themselves and defendants. In this background, I have perused the written statement of defendant no.1, 2, 3(a to d), 4, 5(ai) and 9. The defendants in their written statement admitted the relationship as alleged in the plaint. The defendants in their written statement stated that 'B' schedule property bearing Sy.No.15, measuring 2 acres 12 guntas is the self-acquired property of Kempanarasaiah. Accordingly, on 24.1942 the said Kempanarasaiah gifted the said property to defendant no.1 to 4.

8. Having said this, the plaintiff in the application prays this court to restrain defendant no.1, 2, 3(a to d) & 4 from selling or cutting various standing trees alleged to have been situated over land bearing Sy.No.15/P2, the 'B' schedule property. Be it stated, there are no documents on record to prima-facie show that 'B' schedule property bearing Sy.No.15/P2 consists of trees, as narrated in the application, as on the date of filing the present application. As such, no materials have been placed by the plaintiff to show that as on the date of filing the present application, 'B' schedule property consists of trees as stated in the application. In the absence of any materials, it is not possible to ascertain whether

'B' schedule property consists of trees as elucidated in the application, as on the date of filing the present application. So also, there are no pleadings about existence of trees over 'B' schedule property. In these circumstances, considering the application, objections, pleadings and materials on record, I am of the view that the plaintiff has not made out prima facie case. Accordingly, point no.1 is answered in the negative.

POINT No.2 AND 3:-

9. For the sake of convenience and to avoid repetition of facts these points are taken together for common discussion. In the case at hand the plaintiff failed to show that there is a prima-facie case. This being the case, the questions as to balance of convenience and irreparable loss need not be considered. In this regard, I am supported by the decision of Hon'ble High Court of Karnataka between Sri. Gowrishankara Swamigalu V/s. Siddaganga Mutt, cited in ILR 1989 KAR 1701, wherein Hon'ble court held as below;

“If there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if

there was a prima-facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction.”

In view of the law laid down by the Hon'ble High court I am of the view that these two questions do not arise for consideration as the plaintiff failed to show prima-facie case.

POINT NO.4:

10. In view of reasons on point No.1 to 3, I proceed to pass the following,

ORDER

**IA No.11 U/o.39 Rule 1 and 2 of CPC
filed by plaintiff is hereby rejected on
cost of Rs.100/-.**

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **7th day of March, 2023.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**