

KATK510002112023



THE COURT OF PRL.CIVIL JUDGE & JMFC, KUNIGAL

PRESENT: SMT. SUJATHA A.B.

B.A.L, LL.B.

**PRI. Civil Judge & JMFC,
KUNIGAL**

DATED: THIS 15th DAY OF JULY, 2024

ORIGINAL SUIT NO.97/2023

BETWEEN:

Plaintiff-

Lakshmangowda
(By Sri.YRH., Advocate)

AND:

Defendants-

1.Sri. Narayana and others
(D-1,2 by Sri. MAC., Advocate
D-3 to 11 exparte)

I.	Provision under which the application is filed	Under Order 94 (c) and (e) of CPC
II.	Relief sought for	To grant an exparte ad-interim order of temporary injunction order against defendants

III.	The date on which the application is filed	07.02.2024
IV.	Number of the application	II
V.	The date on which the objections are filed by	28.2.2023
VI.	The date on which the order were passed on the said application	15.07.2024

RANKS OF THE PARTIES IN IA No.II

Applicant/Plaintiff-

Lakshmangowda

Vs.

Opponent/Defendants-

Narayana and others

ORDERS ON I.A.No.II

IA.No.II is filed by the applicant/plaintiff under Section 94 (c) & (e) of CPC, to pass an ad-interim order of temporary injunction against defendant No.1& 2 and their agents, henchmen, servants, supporters or any other persons claiming any right under or through them from cut and

remove the standing trees over the suit schedule properties in any manner till disposal of the suit.

2. The plaintiff has sworn to an affidavit and contended that, he has filed this suit against defendants for the relief of partition and contended that defendant No.1 and 2 in ulterior motive to defraud their right making attempt to cut and remove the standing trees situated in the schedule properties and trees are worth valuable and if his application is allowed and restrained the defendant No.1 and 2 from cut and remove the standing trees till disposal of the suit, no harm or injustice would be caused to the other side. At the same time if present application is rejected and defendant No.1 & 2 are cut and remove the standing trees over the suit schedule property to the third parties, then he will be put to irreparable loss and injury which cannot be compensated by any means. Among these grounds prays to allow this application.

3. In pursuance of the suit summons, defendant No.1 and 2 have appeared through their counsel and filed objection by denying the contentions of the plaintiff and they further submitted that in the application of plaintiff has not mentioned what are the special trees are there in which land and also not produced single document to show which trees are there. The applicant intended to file this application to drag the proceedings on one or the other reasons. The defendant No.1 and 2 alleged that plaintiff and other defendants are colluded with each other and filed this suit intentionally to harass them. According to defendant there is no trees situated in the suit schedule property except coconut trees and they have growing the above trees. Defendants further contended that plaintiff has not impleaded all the family properties in this suit and some joint family properties for more than Rs.20,000/- per month rent collection by plaintiff and defendant No.3 in the written statement

mentioned properties but the defendant No.1 and 2 are giving entire earning to the plaintiffs for construction of house and purchase properties and they living with land and there is no income to lead their life except the coconut trees in the suit schedule properties. The defendants alleged that plaintiff has not approached this court with clean hands and there is no trees except coconut trees, but plaintiff has filed this application to oust them from the suit schedule properties. Among these grounds they prayed to dismiss the application.

5. Heard arguments from both sides. Perused the materials available on record.

6. The points that would arise for my consideration are:-

(1) Whether the plaintiff has made out a prima facie case to grant temporary injunction as sought?

(2) Is the balance of convenience lies in favour of plaintiff?

(3) Whether the plaintiff will be put to irreparable loss and injury in the event of refusal of temporary injunction sought?

(4) What order?

7. My findings on the above Points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

*Point No.4 : As per final orders
For the following:*

REASONS

8. **Point No.1:-** Admittedly the plaintiff has filed this suit for the relief of partition and separate possession. According to plaintiff, the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 8 and there is no partition or legal division in their family but

contended that defendant No.1 and 2 by colluding with each other trying to cut and remove the standing trees in the suit schedule properties to defraud his right. On the other hand the defendant No.1 and 2 claimed that except coconut trees there were no other trees exists and said coconut trees were grown by them and they are depending on the income of the said trees and they further alleged that the plaintiff by colluding with defendant No.3 filed this false suit. Hence prayed to reject the application.

9. In order to support his case, the plaintiff has produced ROR of suit property Sy.No.14/1 and 15/3. On perusal of the column No.12 crop details reflecting as coconut trees. At the same time the defendant No.1 and 2 also admitted existence of coconut trees in the suit schedule properties and this aspect goes to show that there exists coconut trees in the suit schedule properties. According to plaintiff he has apprehended that defendant No.1 and 2 are trying to cut and

remove the said trees to defraud plaintiff right. Further more, the ambit of Order 39 rule 1 and 2 of CPC is to preserve the property as it is till rights of the parties are declared.

10. It is further noticed that defendant No.1 and 2 have not denied the relationship between themselves and plaintiff and this indicates that they are belongs to same family and in addition to that the plaintiff has produced photographs. To support his contention to show that existence of trees in the suit schedule properties, at this stage the plaintiff by producing photographs swearing to an affidavit contending regarding existence of trees in the suit schedule properties and same is well supported in the documents produced by the plaintiff ROR of the suit schedule properties. More over, the defendant No.1 and 2 also not disputed existence of coconut trees. Hence, plaintiff has made out prima facie case,

at this stage to grant relief as sought in I.A.No.II. Hence I answer Point No.1 in the **Affirmative**.

11. **Point No.2 and 3:-** Since these points are involves common facts so in order to avoid the repetition of facts, I combined these two points together for my discussion. The existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

12. In light of the above, after considering the materials on record, this court is of the opinion that when plaintiff has filed the present suit for partition and further if plaintiff got

apprehension with the act of the defendants since as per their own contention of defendants there exists trees in the suit schedule property. So under such circumstances, if this Court declines to grant temporary injunction in favour of the plaintiff and if the defendants succeeded in cut and remove the trees in the suit schedule properties, then it will lead to multiplicity of proceedings. At the same time, if the application is allowed, no hardship injury caused to the defendants. In order to protect the interest of the parties to the suit, this Court is of the opinion that defendants have to be temporarily restrained from cut and remove the trees existed in suit schedule property till disposal of the suit.

Hence I answer Points No.2 and 3 are in the Affirmative.

13. **Point No.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The I.A.No.II filed by the plaintiff under Section 94 (c) and (e) of C.P.C. is hereby allowed.

By way of granting temporary injunction in favour of the plaintiff, against defendant No.1 & 2 and their agents, henchmen, servants, supports or any other persons claiming any right under or through them are hereby restrained from cut and remove the standing trees over the suit schedule properties in any manners till disposal of the suit.

No orders as to costs.

*(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open Court on this the **15th day of July, 2024**)*

(SMT. SUJATHA A.B.)
Prl. Civil Judge & JMFC,
Kunigal.