

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC, AT
PAVAGADA.**

Dated this the 7th day of April 2021.

Present
**Sri. Bharath Yogeesh Karagudari, BAL, LLB,
Addl. Civil Judge & JMFC,
PAVAGADA.**

ORIGINAL SUIT No.334/2019.

Plaintiff/s : Smt.Siddamma.

/VS/

Defendants/s : Smt.Adavakka & others.

I.A. No.I

Applicant : Smt.Siddamma.

/VS/

Opponent : Smt.Adavakka & others.

ORDER ON I.A. I UNDER ORDER XXXIX RULE 1 & 2 OF C.P.C.

The plaintiff has filed the I.A.1 under the above said provision praying to defendant No.1 to 3 from interfering into her possession and enjoyment and pluck the tamarind fruits from the trees situated in the suit schedule property.

2. The plaintiff has filed the suit seeking the relief for Permanent Injunction against the defendants with respect to the suit schedule property. The plaintiff also prays for interim relief of the temporary injunction as

stated supra. The plaintiff states in his application that, on 11.10.2018 her mother Eranagamma has gifted the suit schedule property by virtue of registered gifted deed. Since the date of the gift the plaintiff is in the possession and enjoyment of the suit schedule property. She further submits that there are two fruit yielding tamarind trees in the property along with one old well. Such being the case the defendant who are strangers to the suit schedule property are unnecessarily interfering into the suit land and trying to pluck the Tamarind fruits. Therefore, the no other options the plaintiff has filed this suit and seeks for interim relief as stated supra.

3. Per contra, the learned counsel for the defendant has filed his objections to the application contending that, the suit schedule property is ancestral property belonging to Sannamutthaiah, Doddarevanna and Chikkarevanna who happens to be the ancestors of plaintiff and defendants. After their demise the property was inherited by the husband of defendant No.1 and mother of plaintiff, Naganna, Sannamuthaiah, Doddarevanna, Sannarevanna. Accordingly they are in the joint possession and enjoyment of the land. After the death of husband of defendant No.1 Sannamuthaiah, Doddarevanna, Sannarevanna, the mother of plaintiff along with Nagarappa Doddarevanna, Sannamuthaiah and Sannarevaiah created partition in which 5 acres 4 guntas in Sy.No.210/12 fallen to her share and on 11.10.2018 gift deed in executed in favour of the plaintiff and Doddanagamma just to knock off the suit schedule property from the defendant. Addition to this the plaintiff has filed to put forth prima-facia case, the balance of convenience and irreparable loss in his favour. Hence the application of the plaintiff deserves to be dismissed.

4. Heard argument on both sides perused the records.

5. The following points arise for my consideration.

1. Whether plaintiff prove prima facia?
2. Whether plaintiff prove balance of convince?
3. Whether plaintiff prove irreparable loss?
4. What order?

6. My answers to the above points are as under:

Point No.1 - In the affirmative,

Point No.2 - In the affirmative,

Point No.3 - In the affirmative,

Point No.4 - As per final order, for the following.

REASONS

7. **Point No.1 to 3** : As the points are interlinked, they are taken together to avoid repetition of facts.

The plaintiff has filed this application seeking the relief to restraining the defendants from interfering into her possession and enjoyment and pluck the tamarind fruits from the trees situated in the suit schedule property. The plaintiff submits that, her mother has gifted the suit schedule property by virtue of registered gift deed dated 11.10.2018. Since then she is in possession and enjoyment of the same. In support of her pleadings she has produced original registered gift deed and mutation extract and records of right. On perusal of gift deed Eranagamma as executed the gift deed in favour of plaintiff with respect to the property she has inherited from her mother. Accordingly, MR No.H6/2019-2020 has been mutated and the

records of rights is standing in the name of the plaintiff. Thus, it is convincing that the plaintiff is in the possession and enjoyment of the suit schedule property. Further it is mentioned in the gift deed that there are two Tamarind trees in the schedule property and even rights over the said trees are conveyed to the donee. On the other hand the defendant submits that the schedule property are the ancestral property in the joint possession of the members of the joint family till this day there is partition in the ancestral property. The mother of the plaintiff Eranagamma has fabricated and created false partition in which she has shown the suit schedule property fallen to her share and to defeat the rights of the defendant she has gifted the suit schedule property to the plaintiff. In support of contention they has produced xerox copy of OS No.73/2021 pending before Prl.Civil Judge & JMFC Pavagada which filed by the defendants herein for the relief of partition and separate possession with respect to suit schedule property. On analyzing the both side documents prima-facie the gift deed to substantiate that plaintiff is in possession and enjoyment of the suit schedule property along with Tamarind trees. No documents is forthcoming from the defendant side which elucidate that the suit schedule property is a joint family property in joint possession of plaintiff and defendant.

8. Thus, from the above discussion it is convenient to arrive at the conclusion that the defendants claim joint rights whereas. The plaintiff claim individual right in order to resolve the dispute detail trial is required. However, at the stage it is to be seen whether plaintiff has made out prima-facia case or not. Culminating the above facts and circumstances there is no impediment to hold that the plaintiff is successful in making out prima-facia case.

9. The plaintiff asserts that the defendants are interfering into her possession and enjoyment and pluck the tamarind fruits from the trees situated in the suit schedule property. If the T.I. is not granted in favour of the plaintiff, the defendants who are strangers to the property will deprive the benefits of the plaintiff by plucking the fruits from the tree. Prima-facia as per the gift deed the plaintiff appears to be the owner in possession of the Tamarind trees. Thus, the balance of convenience and irreparable loss and will shift in favour of plaintiff.

10. The defendants has failed to put forth sufficient grounds not to grant T.I. in favour of the plaintiff. The plaintiff have successfully established all the three ingredients i.e. prima-facia case, balance of convenience and irreparable loss is in his favour. Therefore, I answer **point 1 to 3 in Affirmative.**

11. **Point No.4:** In view of my findings given to point No.1 to 3 in the affirmative, I proceed to pass the following.

ORDER

I.A.1 No. 1 filed by the plaintiff under Order XXXIX Rule 1 and 2 CPC is hereby allowed.

The defendants, their agents, their servants or their men or anybody claiming under them are restrained from interfering into her possession and enjoyment and pluck the

*tamarind fruits from the trees situated in the
suit schedule property*

No order as to costs.

(Directly dictated to the stenographer on computer and print out taken by him, and then corrected and pronounced by me in the open Court on this the 7th day of April 2021).

(Bharath Yogeesh Karagudari)
Addl. Civil Judge & JMFC,
Pavagada.