

**IN THE COURT OF ADLL.CIVIL JUDGE, BHATKAL
AT: BHATKAL**

**Present:
Sri. Nagendra,
B.A., LL.B.,
Addl. Civil Judge, Bhatkal.**

**O.S.No.20/2020
Dated this, the 15th day of October 2020**

1. Smt. Nagamma Kom Jattayya Devadiga
and othersPlaintiffs

-Versus-

1. Sri. Shaniyar Bin Narayana Devadiga
and Others Defendants

I.A.No.II

1. Smt. Nagamma Kom Jattayya Devadiga
and othersApplicants/
Plaintiffs

-Versus-

1. Sri. Shaniyar Bin Narayana Devadiga
and OthersOpponents/
Defendants

(By - Sri. **R.R.S.**, Advocate for Plaintiffs)

(By - Sri. **S.B.B.**, Advocate for Defendant No.1 to 7)

ORDER ON I.A.NO.II

1. The plaintiffs have filed I.A.No.II under Order 39 Rule 1 and 2 R/w Sec.151 of Code of Civil Procedure, seeking to restrain the defendants, their men, anybody claiming under them from trespassing, cutting trees for fire wood, dumping waste things and from allowing waste water in the suit schedule property.
2. The defendants have filed objection to the application.
3. I have heard learned counsel for the plaintiffs and the defendants.
4. On perusal of the records of the case, the following points would emerge for my consideration:

1. **Whether the plaintiffs have made out a prima-facie case ?**
 2. **Whether the balance of convenience tilts in favour of the plaintiffs ?**
 3. **Whether the plaintiffs would be put to irreparable loss if the temporary injunction is not granted ?**
 4. **To what order ?**
5. My findings on the above points are as under:-
1. **In the Negative**
 2. **In the Negative**
 3. **In the Negative**
 4. **As per final order for the following:-**

REASONS

6. **Point Nos.1** In an affidavit annexed to I.A.No.II, it is stated by the plaintiffs that, suit schedule property is malki property belongs to the plaintiffs and same is in their possession and enjoyment. Originally the Sy.No.427 hissa 1B measuring to an extent of 0-4-0 (A.G.A) was granted by the Bhatkal Land Tribunal by vide order No. LRM 4/303 in the name of husband of 1st plaintiff and father of defendant No.2 to 5 and accordingly mutation No.A2693 has been accepted. There are 7 coconut trees in the suit property and same have been watering and maintained by elders of the plaintiff by name Jattayya Sukrayya Devadiga and same are enjoyed by the plaintiffs. The plaintiffs have invested huge amount for the development of the suit property. It is stated that the defendants have no manner of right, title over the suit schedule property, in spite of it, at the instance of defendant No.1 to 5, the defendant No.6 and 7 have dumped the firewood under the coconut trees and obstructed for watering the coconut trees and therefore the plaintiffs unable to maintain the coconut trees. The defendant No.6 and 7 have allowed the waste water and created nuisance and

- caused interference to the plaintiff to enjoy the suit schedule property. The defendants have made attempt to encroach the suit schedule property. In spite of request of the plaintiffs, the defendants have continued their illegal acts. Hence the plaintiffs prays to allow the application.
7. The defendant have filed written statement and same is adopted as objection to the application. In the objection defendants have denied the application averments in material aspects and contended that, the defendants are the co-owners of the suit schedule property having 0-4-0 of land which is granted by the land tribunal in very same survey number. It is contended that unless and until divided the property by metes and bounds, the plaintiffs cannot seek any relief of injunction against the defendants who are the co-owners of the suit schedule property. It is contended that the plaintiffs have no locus standi to seek the mandatory injunction against the defendants since the suit property is not separated by metes and bounds. The defendants are also having 0-4-0 in very same survey number and same is not separated by metes and bounds. The plaintiffs are not in possession and enjoyment of the suit land or any portion of the suit survey number. It is contended that, the defendant No.7 is the husband of defendant No.6 and they are the adjacent owners of the half of the suit land belongs to the defendant No.1 to 6. The defendant No.6 has got every right to store firewood in their half portion. The defendant No.1 to 6 are in possession of the remaining 0-4-0 in the suit land and their ancestors have planted the coconut trees. The suit of the plaintiffs against the co-owners is not maintainable. Hence the defendants prays to dismiss the IA.No.II.
 8. In view of the rival contention put forth by both the parties let me see whether the plaintiffs have made out grounds to allow

the application. The plaintiffs in support of their contention have produced Adhibogadar entry No.A2693, MR No.14/2008-2009 dated 20/09/2008, RTC of the suit schedule property and MR No.22/2011-2012 dated 09/05/2012. on the other hand, the defendants have produced form No.7, Land Tribunal order, form No.10, RTC, KDT form, sketch and photos. On perusal of the Adhibogadar entry No.A2693 it goes to show that suit schedule property has been granted in the name of husband and father of plaintiff No.1 to 5 and elder uncle of plaintiff No.2 to 5. After the death of the father of the plaintiffs mutation No.14/2008-2009 has been effected wherein the plaintiffs have acquired the right over the suit property by way of inheritance and accordingly RTC is also effected. On other hand, on perusal of the Land Tribunal order produced by the defendants, it goes to show that in very same survey number the father of the defendants has granted the property to an extent of 0-4-0. Accordingly for No.10 is also given and accordingly even the RTC is also jointly standing in the name of the plaintiffs and defendants.

9. The learned counsel for the defendants has vehemently argued that, when the defendants are the co-owners of the suit schedule property, the suit of the plaintiffs itself is not maintainable and discretionary relief of injunction cannot be granted against the co-owners. On perusal of the land tribunal order, the father of the defendants also granted 0-4-0 guntas in the very same survey number. Even the M.R.No.22/2011-2012 also shows that the defendants are the co-owners of the suit property. On perusal of the RTC produced by the plaintiffs itself goes to show that, the suit property is jointly stands in the name of the plaintiffs and defendants. When the suit property is jointly stands in the name of the plaintiffs and defendants, both parties are having equal right over the suit schedule property till the suit property is separated by metes and

bounds. No party has exclusive right over the suit property against the co-owners.

10. The learned counsel for the defendants further argued that, the relief of injunction is the discretionary relief which cannot be granted against the co-owners. On the other hand learned counsel of the plaintiffs has argued that, the plaintiffs has made out prima facie case and balance of convenience is tilts in favour of the plaintiffs. While granting the injunction, the court is required to considered 3 ingredients. 1 Prima facie case.2. Balance of convenience. 3 Irreparable injury. In support of his contention, the learned counsel for the plaintiff has relied upon the judgment of our Hon'ble High Court of Karnataka reported in **2020(3) 2406**. I have gone through the above judgment. The Hon'ble High court is rightly considered the 3 ingredients which are required to see while granting the temporary injunction. But in the case on hand, even though the plaintiffs satisfies the above ingredients, since the suit property is jointly stands in the name of both parties and defendants are the co-owners of the suit land, the plaintiffs is not entitled for injunction. The learned counsel for the defendants, has relied upon the judgment of Bombay High Court reported in **AIR 1996 BOMBAY 36**. Wherein the Hon'ble High Court of Bombay observed as follows.

Civil P.C (1908). O. 39 R.1, 2- Injunction- Grant of- Co-owner in possession of property for and on behalf of other co-owners- Cannot claim injunction against other co-owners restraining them from interfering with his possession and enjoyment of suit property so as to exclude them from exercising their right as co-owners.

11. Further, the learned counsel for the defendants has relied upon the judgment reported in **ILR 1999 KAR 3037**. Wherein their lordship has held as follows:

Hindu Law- Joint possession of coparceners admitted- Whether an injunction can be issued as against one of the coparceners or a person claiming title and possession under him. Held- When once joint possession is admitted by the plaintiff injunction cannot be issued, as against a co-owner.

12. I have gone the above two judgments. On perusal of the documents produced by the plaintiffs and defendants, the defendants are the co-owners of the suit land. When the defendants are the co-owners of the suit land, as per the dictum laid down by the Hon'ble High Court, injunction cannot be granted against the co-owners. Therefore, the plaintiffs are not entitled for the relief of injunction. Hence for the reasons discussed supra, I have arrived at the conclusion that the plaintiffs have not make out a prima facie case. Hence, **point No.1 is answered in the Negative.**

13. **Point No.2 & 3:** In view of the plaintiffs failed to make out a prima facie case, balance of convenience is not lies in favour of plaintiffs. Hence I answered point No.2 and 3 in Negative.

14. **Point No.4:** For the foregoing reasons, I pass the following:

ORDER

I.A.No.II filed by the plaintiffs under Order 39 Rules 1 and 2 R/w Sec.151 of the Code of Civil Procedure is dismissed.

Under the facts and circumstances of the case, no order as to costs.

*(I have directly typed on my laptop, corrected and then pronounced by me in the open Court on this, the **15th day of October, 2020.**)*

Sd/-

**(Nagendra)
Addl.Civil Judge, Bhatkal.**

“ Order pronounced in open Court ”

ORDER

I.A.No.II filed by the plaintiffs under Order 39 Rules 1 and 2 R/w Sec.151 of the Code of Civil Procedure is dismissed.

Under the facts and circumstances of the case, no order as to costs.

(Nagendra)
Addl.Civil Judge, Bhatkal.

