

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,
KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 26th day of September, 2025.

O.S.No.50/2025

Sundari and others	Versus -	..Plaintiffs
Karunakara Poojary		..Defendant

PARTIES TO I.A.NO. III

Karunakara Poojary,
Aged about 36 years,
S/o. Late Kariya Poojary,
Residing at Chithrabailu House,
Mundli, Jarkala Village,
Karkala Taluk, Udupi District. .. Applicant/defendant

- Vs -

1. Smt. Sundari,
Aged about 67 years,
W/o. Late Kariya Poojary,
Residing at 1-159, Baithrabailu,
Jarkala Post, Jarkala Mundli Village,
Karkala Taluk, Udupi District.
2. Shankara Poojary,
Aged about 48 years,
S/o. Late Kariya Poojary,
Residing at 1-99(A), Baithra Bailu
Darkas House, Jarkala Post,
Jarkala Mundli Village,
Karkala Taluk, Udupi District.
3. Ramani, Aged about 45 years,
D/o. Late Kariya Poojary,

W/o. Jaya Poojary,
Residing at Narayanaguru Colony,
Jarkala Post, Jarkala Mundli Village,
Karkala Taluk, Udupi District.

4. Ramayya Poojary,
Aged about 44 years,
S/o. Late Kariya Poojary,
Residing at 1-99(A),
Brahmashree Narayanaguru Colony,
Jarkala Post, Jarkala Mundli Village,
Karkala Taluk, Udupi District.
5. Raju Poojary,
Aged about 40 years,
S/o. Late Kariya Poojary,
Residing at Baithra Bailu
Jarkala Post, Jarkala Mundli Village,
Karkala Taluk, Udupi District.
6. Umesh Poojary,
Aged about 37 years,
Residing at 1-99(A), Baithra Bailu
Darkas House, Jarkala Post,
Jarkala Mundli Village,
Karkala Taluk, Udupi District. .. Opponents/plaintiffs

i.	Provision under which the application is filed	Order 39 Rule 1 and 2 and Section 151 of CPC
ii.	Relief sought for	To grant temporary injunction
iii	The date on which the application is filed	04-07-2025
iv	Number of the application	I.A.No.3
v	The date on which the objections are filed by different opponents	01-08-2025
vi	The date on which the orders were passed on the said application.	26-09-2025

ORDER ON I.A.NO.3 UNDER ORDER 39 RULES 1 AND 2
AND SECTION 151 OF C.P.C.

Application is filed by the defendant seeking an order of temporary injunction restraining the plaintiffs from obstructing the defendant for removal of 1 jackfruit tree felling in the property bearing Sy.No.6/3 measuring 0.30 acre of Jarkala Village.

2. The defendant deposes that he is in possession of the property by virtue of the gift deed executed by his father. That the defendant has already cut off and sold the trees in order to pay the agricultural loan. That there is one jackfruit tree, which is not in the suit property, which the plaintiffs are obstructing for disposal of the same. Hence prays to allow the application.

3. Per contra counsel for the plaintiffs objects that the gift deed is obtained illegally, by fraud and misrepresentation. That they are entitled for share in the suit property and the defendant cannot alone use the usufructs and thus prays to dismiss the application.

4. Heard from the counsels for plaintiffs and defendant .

5. The following points arise for my determination .

- 1) Whether the defendant has made out a prima facie case?
- 2) In whose favour the balance of convenience lies?
- 3) Who will suffer irreparable injury and hardship if temporary injunction is not granted ?
- 4) What Order?

6. My answers to the above points is

Point No.1 – In affirmative,

Point No.2 – Defendant

Point No.3 - Defendant

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

REASONS

7. **Points No.1 to 3** :- As these points are inter-linked with each other, they are taken up together for common discussion.

8. The defendant deposes that he is in possession of the property and has availed loan and in order to repay the same, he has sold three jack fruit trees and one saguvani tree

existing in the suit property. That the said trees have been cut before the present suit and the plaintiffs are obstructing by obtaining temporary injunction order. That the said tree is not in the suit property and if left in open space, without protection, would be destroyed. That prima facie case is made out and prays to allow the application.

9. Per contra counsel for the plaintiffs denies the allegations made by the defendant and submits that the gift deed was executed by the husband of plaintiff No.1 and father of plaintiffs No.2 to 6 and defendant, which was by misrepresentation and fraud. Thus the present suit is filed seeking cancellation of the said gift deed. The defendant has deliberately cut several valuable teakwood trees and five big jackfruit trees forcibly with the sole intention to make unlawful gain. That the defendant is not entitled for an order of injunction and prays to dismiss the application.

10. At this stage, this court has to only see the prima facie case and not the merits of the case. The plaintiffs are not denying the possession of the defendant over the suit schedule property. The gift deed is also executed in the year 2018 and

mutation was in the year 2019. The Khatha is also in the name of the defendant. Therefore, the defendant must have used the usufructs from the suit schedule property and on the same basis, the trees have been cut. Now if the tree is kept pending, will be absolutely destroyed by the heavy rain and light. Accordingly permission is to be accorded to the defendant to dispose of the said jackfruit tree.

11. But the defendant has to properly comply with the procedure to transport the same by obtaining permit and licence from the concerned forest department. Further the defendant also needs to be directed to deposit the sale proceeds before this court, which will be subject to final order of this court or give the accounts of the same in order to avoid future complication. Whether the plaintiffs are entitled for share in the suit property or not has to be decided after a full fledged trial. Thus the prima facie case is made out by the defendant, the balance of convenience tilts in favour of the defendant, the defendant would be put to more hardship and loss if injunction is not granted. Accordingly the above points are answered in favour of the defendant.

12. **Point No.4:-** In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.3 filed by the defendant under Order 39 Rule 1 and 2 and section 151 of C.P.C. is here with allowed.

The plaintiffs are herewith restrained from obstructing the defendant for removal of 1 jackfruit tree felling in the property bearing Sy.No.6/3 measuring 0.30 acre of Jarkala Village.

The defendant shall comply with the procedure to transport the same by obtaining permit and licence from the concerned forest department.

Further the defendant is directed either to deposit the sale proceeds before this court or give the accounts of the same .

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 26th day of September, 2025.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala