

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

Present:- Smt. Roopashri , B.Com., LL.B.
Senior Civil Judge & ACJM., Karkala.

Dated:- This the 21st day of April, 2021.

F.D.P. No.15 OF 2020

Sri. Mohanchandra Shettigar .. Plaintiff.

- Vs.

Sri. Jayananda Shettigar and others .. Defendants

PARTIES ON I.A.NO.I

Sri.Mohanchandra Shettigar,
Aged about 72 years,
S/o. Late K. Chandru Shettigar,
R/at. House No.532, Ponjirval,
Kokada Village, Queepam Taluk,
South Goa District-403 706. .. Applicant/petitioner

- Vs.-

Sri. K.G. Prakash Shettigar,
Aged about 46 years,
S/o. Late Bhavani Shettigar
and residing at Khedpu,
Pervaje, Karkala Kasba
Village, Karkala Taluk,
Post: Karkala-574 104. ..Opponent/8th Respondent

ORDER ON I. A. NO.I

The petitioner has filed IA No I under Order 39 Rule 1 and 2 CPC for an order of temporary injunction restraining the 8th respondent from cutting and removing the valuable tree growths in the schedule properties and from transporting the same pending disposal of the above proceedings in the ends of justice and equity .

2. The 8th respondent has filed his objection statement to IA No I.

3. Heard the learned respective counsels and perused the materials placed on record.

4. The point that would arise for the consideration of the court is -

1. Whether the petitioner has made out prima- facie case?

2. In whose favor balance of convenience lies?

3. Who will suffer substantial injury and hardship if an order of temporary injunction is granted or other wise?

4. What order?

5. My answer to the above points is

Point No 1: In the Affirmative

Point No 2: In favor of the petitioner

Point No3: Petitioner will suffer
substantial injury and hardship
if an order of temporary
injunction is not granted

Point No 4: As per final order
for the following

REASONS

6. Point No1 to 3: As these points are interconnected they are taken up together for common discussion to avoid repetition of facts.

7. If the materials placed on record is perused it goes to show that respondents no 1 to 8 here in has filed suit in O.S No 28/2015 on the file of this court for the relief of partition for division of the suit properties in to three equal shares and allotment and delivery of one such share to them .

8. After hot contest the said suit was partly decreed and ordered to divide the suit properties in to 6 fair and equal shares and to allot 1/6th share to the plaintiffs , 4/6th

share to the defendants no 1 and 2 i.e petitioner here in and his brother Vinodchandra Shettigar and $1/6^{\text{th}}$ share to the defendants no 3 to 9 . Admittedly challenging the judgment and decree passed in O.S No 28/2015, plaintiffs have not preferred any appeal.

9. The defendants no 1 has filed the present final decree petition for division of the suit properties in to 6 fair and equal shares and allotment of his $4/6^{\text{th}}$ share in the suit properties. It is submitted by the petitioner that his brother Vinodchandra Shettigar died bachelor on 9/10/2019 and his undivided $2/6^{\text{th}}$ share in the suit properties devolved upon him and hence he is entitled for $4/6^{\text{th}}$ share in the suit properties. In order to evidence the fact of death of Vinodchandra Shettigar , the petitioner has produced the death certificate of his brother . So far as the death of Vinodchandra Shettigar is concerned, it is not in dispute as respondents themselves in their objection to main petition have admitted the death of Vinodchandra Shettigar but raised the contention that Vinodchandra died leaving behind his wife and children who are residing at Goa and hence the $2/6^{\text{th}}$ share of Vinodchandra Shettigar in the suit properties devolves not on the petitioner but on his wife and children.

10. So far as devolving of $2/6^{\text{th}}$ share of Vinodchandra Shettigar on his death in favor of petitioner as contended by the petitioner so also the objection raised by the respondents contending that Vinodchandra Shettigar died not as bachelor but leaving behind his wife and two children is concerned, the said material point cannot be considered and decided at this stage while deciding IA No I, for which separate enquiry required to be held and it is after holding such enquiry if it is proved that Vinodchandra Shettigar died bachelor, then petitioner being the class II legal heir of brother will get his $2/6^{\text{th}}$ share in the suit properties and in such an event the share of the petitioner in the suit properties will get increases to $4/6^{\text{th}}$ and under such circumstances court has to pass supplementary preliminary decree by enhancing the share of the petitioner from $2/6^{\text{th}}$ to $4/6^{\text{th}}$. In the event if respondents succeeded in proving that Vinodchandra Shettigar died leaving behind his wife and children then the wife and children of Vinodchandra Shettigar have to be impleaded in the final decree proceedings and the wife and children of Vinodchandra Shettigar will get $2/6^{\text{th}}$ share of Vinodchandra Shettigar.

11. The GPA holder of the petitioner by filing temporary injunction application has contended that petitioner is residing at Goa and in his absence the 8^{th}

respondent has illegally cut and removed the valuable tree growths in the suit properties worth more than Rs 6,00,000/- and falsely represented that the forest officials have transported the same. It is further submitted that 8th respondent and his men are now hatching plan to further cut and remove the valuable tree growths from the suit properties to make unlawful gain. If the 8th respondent and his men are not restrained from cutting and removing the tree growths from the suit properties, the petitioner will be put to irreparable loss and injury and hardship hence to restrain the 8th respondent and his men from cutting and removing the valuable trees by granting temporary injunction order against them.

12. The respondent no 8 by filing objection statement at the outset has denied the allegation of his cutting and removing the trees standing in the suit properties and submitted that it is the GPA holder of the petitioner having dealing with the timber merchants is responsible for cut and transportation of the timber trees standing in the suit properties and there after falsely filed complaint before the police and Forest officials. It is further submitted that petitioner has never been in possession of the suit properties at any point of time as he is the permanent resident of Goa and that it is the respondents no 2 to 6 and 8 are in actual possession and enjoyment of the suit

properties and there are two houses in the suit properties occupied by their parents and these are the tree growths reared and protected by the ancestors of the respondents and on their death these respondents are taking care and protecting them . Since petitioner has not been in possession of the suit properties he is incompetent to claim the relief of temporary injunction order against the persons who are in lawful possession with prima facie title and that if temporary injunction is granted their legal right will be affected hence submitted to reject the application .

13. If the objection statement of the 8th respondent is perused, the 8th respondent is bent upon stated that they are in possession o and enjoyment of the suit properties and they have reared and protected the tree growth in the suit properties and that petitioner never been in possession of the suit properties hence he is not competent person to claim the relief . But admittedly suit in O.S No 28/2015 filed by the respondents was partly decreed and major share in the suit properties was given to the petitioner and his brother. Hence 8th respondent cannot at this stage raise the dispute regarding the possession of the suit properties. When petitioner has filed the final decree proceedings for division of suit properties by metes and bounds and to allot his share , till the properties are divided by metes and bounds no sharer has right to change the nature of the

suit properties whether he is in exclusive possession of the properties or not . It is only after division of the properties by metes and bounds and allotment of properties to the respective sharers , they can act according to their whims and fancies in the extent of properties allotted to their respective share , till then every sharer has right in every inch of the family properties .

14. The petitioner at this stage has produced the positive photograph which depicts the timber logs stacked in the property. In further the petitioner has produced the copy of the complaint lodged against the respondents, the statement given by them before the SHO Jurisdictional Police and the endorsement given by the SHO Town police station Karkala etc .

15. When it is the apprehension of the petitioner that 8th respondent is hatching plan to cut and remove the valuable standing trees in the suit properties , and when petitioner has filed before this court one more application under Order 26 Rule C.P.C imputing very same allegation against the respondent no 8 stating that respondent no 8 has already cut and removed the some valuable trees and planning to cut and remove the remaining trees hence to appoint court commissioner to

auction the timber logs lying in the suit properties , in order to preserve the suit properties till the suit properties are divided by metes and bounds this court finds it just to grant an order of temporary injunction . The petitioner by pleading material facts and producing material documents at this stage has made out prima facie case; even balance of convenience also lies in his favor. Hence if an order of temporary injunction is not granted, it is petitioner who is going to suffer substantial injury and hardship rather than the 8th respondent by granting the temporary injunction. Accordingly point no1 to 3 are answered in favor of the petitioner and against the respondent no 8 .

16. **Point no 4** :- In view of the findings given on point no 1 to 3 this court proceeds to pass the following

ORDER

I.A.No.I filed by the petitioner under Order 39 Rule 1 and 2 CPC is allowed .

The respondent no 8 and all persons claiming through or under him are restrained from cutting and removing the valuable tree growths existing in the suit properties and from

transporting the same pending disposal of the petition.

(Typed by Presiding Officer in laptop then corrected and pronounced in the open Court on this the **21st DAY OF APRIL 2021**)

(Roopashri)

Senior Civil Judge & ACJM, Karkala.