

KABG300000522026



**IN THE COURT OF THE SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

Dated this the 16th Day of June 2026

PRESENT:

**Sri. Ravi Babu Chawan
B.A. LL.B.,
Senior Civil Judge, Bailhongal.**

R.A. No.12/2026

1) Mr. Sayad Mugutsha S/o Abdulsattar Peerzade,
and others,

..... Appellants

(By Shri. M.M.S., Advocate)

- Vs. -

1) Mr. Dastagir Mugutsab Hongal,
and others,

..... Respondents

(By Shri. J.V.P., Advocate for Prop. R6)
(By Shri. S.H.M., Advocate for R4)

PARTIES TO IA No.II

1) Mr. Sayed Mugutsha S/o Abdulsattar Peerzade,
Age: 68 years, Occ: Business,
R/o: H.. No.4167/B, Chandu Galli,
Kakatives Road, Belagavi.

2) Mr. Riyazahmed S/o Imamhussain Peerzade,
Age: 64 years, Occ: Service,
R/o: Makan Galli, M.K. Hubli,,
Tq: Kittur, Dist: Belagavi.

3) Mr. Husensah S/o Sayedsha Peerzade,
Age: 60 years, Occ: Business,
R/o: Makan Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

**.....Applicants/
Appellants**

(By Shri. M.M.S., Advocate)

- Vs-

1) Mr. Dastagir Mugutsab Hongal,
Age: 60 years, Occ: Agriculture,
R/o: Goudar Oni, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

2) Mr. Iyaz Abdulmajid Patel,
Age: 48 years, Occ: Agriculture,
R/o: Goudar Oni, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

3) Mr. Sayyad Najeerahmad S/o Husensha Peerzade,
Age: 79 years, Occ: Agriculture,

R/o: M.K. Hubli, Tq: Kittur,
Dist: Belagavi.

4) Mr. Sayyad Abbusha S/o Husensah Peerzade,
Age: 62 years, Occ: Agriculture,
R/o: M.K. Hubli, Tq: Kittur,
Dist: Belagavi.

5) Mr. Sayyadsha S/o Husensha Peerzade,
Age: 60 years, Occ: Agriculture,
R/o: M.K. Hubli, Tq: Kittur,
Dist: Belagavi.

**..... Opponents/
Respondents**

(By Shri. J.V.P., Advocate for Prop. R6)
(By Shri. S.H.M., Advocate for R4)

ORDER ON IA No. II

The appellants have filed the present application under Order XLI Rule 5 R/w Section 151 of CPC seeking stay of execution and operation of the judgment and decreed dated 06-04-2026 passed by the learned Civil Judge and JMFC, Kittur in O.S. No.42/2021.

2. In the affidavit filed in support of the application, appellant No.1 has contended that the appellants have preferred the present appeal challenging the judgment and decree dated 06-04-2026 where by counter claim filed

by the respondent No.3 to 5 came to be allowed. It is stated that the averments made in the appeal memorandum may be treated as part and parcel of the affidavit to avoid repetition of facts. It is further contended that respondent Nos.3 to 5, by way of counter claim, had sought a declaration that they are descendants of original trustee. However, the learned Trial Court, while allowing counter-claim declared respondent No.3 to 5 as descendants of "Hazrath Mugut Shah Wali", which according to the appellants is beyond the relief sought in counter-claim. It is further contended that the appellants are hereditary trustees of Mugutkhan Devalaya and their rights have been recognized and upheld in earlier proceedings before Civil Courts, the Hon'ble High Court and the Karnataka State Board AUQAF. According to the appellants, the impugned judgment has reopened disputes which had attained finality several decades ago. It is also contended that the learned Trial Court has exceeded its jurisdiction by granting liberty to respondent Nos.3 to 5 to approach the Karnataka State Wakf Board seeking recognition as Mutavallis. The appellants further contended that such observations are contrary to the provisions of the Wakf Act. It is alleged that respondent

Nos.3 to 5 are attempting to use the impugned judgment to mislead statutory authorities and harass the appellants. It is further stated that the appellants have a strong prima facie case and every likelihood of the succeeding in the appeal. According to them, disposal of the appeal would take considerable time and during the pendency of the appeal the respondents may misuse the impugned judgment, resulting in irreparable injury and multiplicity of the proceedings. On these grounds, the appellants have sought stay of the execution and operation of the impugned judgment and decree pending disposal of the appeal.

3. Per contra respondent Nos.3 to 5 have filed objections opposing the application. They have contended that the averments made in the affidavit filed in support of the application are false, untenable and contrary to the records. It is contended that the present appellants had instituted O.S. No.51/2019 against the respondent Nos.1 and 2 and others seeking the relief of perpetual injunction in respect of the management and administration of Mugutkhan Devalaya. It is further contended that the respondent Nos.1 and 2 had also instituted O.S.

No.42/2021 seeking perpetual injunction against the present appellants in respect of property bearing No.384 situated at M.K. Hubli. According to the respondents, during the pendency of O.S. No.42/2021, respondent Nos.3 to 5 were impleaded as parties to the suit pursuant to an application filed an order I Rule 10 of CPC. After their impleadment, respondent Nos.3 to 5 have filed written statement and set up a counter claim seeking declaration that they are descendants of the original trustees. It is contended that by judgment dated 06-04-2026, the learned Trial Court dismissed O.S. No.42/2021 and decreed the counter claim filed by respondent No.3 to 5. It is further contended that O.S. No.51/2019 filed by the present appellants and O.S. No.42/2021 filed by the respondent Nos.1 and 2 were both dismissed with costs. It is stated that while decreeing the counter claim, the learned Trial Court declared the respondent Nos.3 to 5 as true lineal descendants of "Hajarat Mugut Saha Wali" and granted them liberty to approach the Karnataka State Wakf Board under Section 32, 63, 64 and 67 of the Wakf Act or the Wakf Tribunal under section 83 of the act, for appropriat relief regarding recognition of Mutavalliship, constitution of committee and management of the Dargha.

The respondents further contended that when both the suits seeking injunction were dismissed, there remains no executable decree against appellants. According to them, the findings recorded by the Trial Court, are merely decletory in nature and there is nothing capable of execution. Hence, the applications seeking stay of execution is not maintainable in law. On these grounds, respondent Nos.3 to 5 have sought dismissal of the application with costs.

4. Heard both sides and perused the application, affidavit, objections, written arguments, citation relied upon and the records made available before the Court.

5. The points that arise for consideration are as under:

1) Whether the appellants have made out sufficient grounds for grant of stay of operation of the judgment and decree dated 06-04-2026 passed in O.S. No.42/2021 pending disposal of the appeal ?

2) What order ?

6. My findings on the above points are as follows:

Point No.1: In the Affirmative

Point No.2: As per final order, for the following:

REASONS

7. **Point No.1**:- The records disclose that the present appeal has been preferred challenging the judgment and decree dated 06-04-2026 passed by the learned Civil Judge and JMFC, Kittur, in O.S. No.42/2021. The Trial Court has dismissed the suit and decreed the counter-claim filed by the respondent Nos.3 to 5 declaring them as the true lineal descendants of "Hajarat Mugut Shah Wali" and further granted liberty to them to approach the Karnataka State Wakf Board or the Wakf Tribunal for recognition of Mutawalliship, constitution of committee and management of the Dargah.

8. The principle contention of the appellants is that the Trial Court has travelled beyond the scope of the relief sought in the counter-claim by the respondent Nos.3 to 5 and as granted a declaration which was not specifically prayed for by respondent Nos.3 to 5. It is further contended that the appellants are claiming hereditary

trusteeship over the institution and their rights have been recognised in several earlier proceedings. Therefore, the correctness and legality of the findings recorded by the Trial Court are substantial questions which require detailed consideration at the stage of final hearing of the appeal.

9. At this interlocutory stage, this Court is not excepted to undertake a detailed examination of the merits of the appeal. However, the Court is required to ascertain whether the appellants have established a prima facie case, balance of convenience and likelihood of irreparable injury. On perusal of the impugned judgment and decree and the grounds urged in the memorandum of appeal, it cannot be said that the appeal is frivolous or devoid of arguable grounds. The question as to whether the Trial Court could have granted a declaration in the manner it has done and whether such declaration affects the rights claimed by the appellants are matters requiring adjudication in the appeal. Therefore, the appellants have succeeded in establishing a prima facie case.

10. The learned counsel for respondent Nos.3 to 5 as relied upon decision reported in ***ILR 1995 KAR 1812*** and

contended that when a suit for permanent injunction is dismissed, there remains no executable decree and therefore no order of stay can be granted. It is further contended that in the present case both the suits seeking perpetual injunction have been dismissed and consequently there is no executable decree capable of being stayed under order XLI Rule 5 of CPC.

11. In view of the above contention raised by the learned counsel for respondent No.3 to 5, this Court has carefully considered, ratio laid down in the aforesaid decision. There can be no dispute with the legal proposition that whether the suit is merely dismissed and no executable relief is granted, ordinarily the question of staying execution of such dismissal decree would not arise. The principle laid down in the said decision is well settled and not disputed. However, the facts of the present case stand on a different footing. The impugned judgment is not a simple decree dismissing a suit for injunction. Apart from dismissal of the suit of the appellants, the learned Trial Court has decreed the counter-claim filed by respondent Nos.3 to 5 and has granted a declaration that the respondent Nos.3 to 5 are the true lineal descendants

of “Hajarat Mugut Saha Wali”. The Trial Court has further reserve liberty in favour of respondent Nos.3 to 5 to approach the Karnataka State Wakf Board and other competent forums for recognition of Mutawalliship, constitution of committee and management of the institution.

12. Therefore, unlike the facts involved in the decision relied upon by respondent No.3 to 5, the impugned judgment in the present case contents substantive declaratory findings in favour of respondent Nos.3 to 5. Thus, such findings are capable of being relaid upon before statutory authorities and other forums for securing consequential reliefs. Hence, the apprehension expressed by the appellants that the respondents may act upon said declaration during the pendency of appeal cannot be said to be wholly unfounded.

13. It is also relevant to note that the appellants are not merely seeking stay of execution proceedings. The prayer is for stay of operation and effect of the impugned judgment and decree. The Appellate Court, in exercise of powers under order XLI Rule 5 R/w Section 151 of CPC

possesses ample jurisdiction to pass appropriate interim orders so as to preserve the subject matter of the appeal and prevent the appeal from being rendered infructuous.

14. Further, it is well settled that the object of granting interim protection is maintain status-quo and safeguard the rights of the parties till final adjudication of the appeal. In view of the said well settled principle of law if the respondent Nos.3 to 5 are permitted to rely upon impugned declaration before various statutory authorities and obtain consequential orders during the pendency of the appeal, the very purpose of the appeal may be defeated and the appellants may suffer irreparable prejudice. Accordingly, this Court, is of the considered opinion that the judgment relied upon by the respondent Nos.3 to 5 is distinguishable on facts and does not bar this Court from granting appropriate interim protection in the peculiar facts and circumstances of the present case. Hence, the said decision does not advance the case of respondent Nos.3 to 5, so as to deny relief sought by the appellants.

15. Insofar as the balance of convenience is concerned, the balance of convenience also leans in favour of the appellants. Though, the respondent Nos.3 to 5 contended that there is no executable decree, the fact remains that the impugned judgment contains a declaration recognizing respondent Nos.3 to 5 as lineal descendants of "Hajarat Mugut Saha Wali" and further reserves liberty to them to approach statutory authorities for recognition of Mutawalliship and management of the institution. Under the such circumstance, if the operation of the impugned judgment is not stayed, there exists a reasonable possibility of the respondents, relying upon said declaration before the Karnataka State Wakf Board and other authorities. Therefore, any action taken on the basis of the impugned judgment of the during the pendency of the appeal may give rise to further complications and multiplicity of proceedings.

16. Further if the respondents secure recognition or other consequential reliefs from the statutory authorities by placing reliance upon the impugned judgment and if ultimately the appeal succeeds, the appellants may be compelled to initiate further proceedings for restoration of

their rights. Hence, such a situation would result in avoidable litigation and irreparable hardship to the appellants. On the other hand, grant of stay would only preserve the existing state of affairs till adjudication of the appeal and would not cause any serious prejudice to respondent Nos.3 to 5.

17. Further I repeat that the object of the Order 41 Rule 5 of CPC is to preserve the subject matter of litigation and protect the rights of the parties pending adjudication of the appeal. Considering the nature of the declaration granted by the Trial Court, the consequences that may follow therefrom and the necessity of maintaining status-quo till disposal of the appeal, this Court is of the considered opinion that the appellants have made out sufficient grounds for grant of stay. Accordingly, point No.1 is answered in the Affirmative.

18. **Point No.2:-** for the reasons assigned while answering point No.1, I proceed to pass the following

ORDER

I.A No.II filed by the appellants
under Order XLI Rule 5 R/w Section 151
of CPC is hereby allowed.

The operation and effect of the judgment and decree dated 06-04-2026 passed by the learned Civil Judge and JMFC, Kittur in O.S. No.42/2021, insofar as it relates to the decree passed on the counter claim and the declaration granted in favour of respondent Nos.3 to 5, shall remain stayed pending disposal of the appeal.

Office is directed to call for TCR from concerned Trial Court.

(Dictated to the stenographer transcribed by him, and corrected by me, then pronounced in the open Court on this the 16th Day of June, 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

