

ORDER ON IA NO.1.

Along with appeal memo, the appellants also maintained IA No.1 U/o 41 rule 5 of CPC praying to stay the operation of orders passed in OS No. 54/2016 on the file of II ACJ and JMFC, Channagiri.

In the affidavit annexed to the application, the appellant No.2 stated that they filed this appeal against the judgment and decree passed by the trial court in OS No. 54/2016 against them for the relief of declaration and also for delivery of possession of suit property by granting the time of three months and in case no delivery was made then the plaintiffs had to take possession of suit property through court process. In fact the application for certified copy was filed on 02.08.2025 itself. But the certified copies delivered to them on 22.04.2026. Now the GPA of respondent filed the execution petition in Ex.No.55/2026 and the notice of the said petition was served on them during this summer vacation and the date fixed for their appearance is on 30.06.2026. But the so called GPA holder of the plaintiff and the wife of his brother namely Jyothi

have filed a police complaint on 21.05.2026 against them requesting the Santhebennur P.S. to get the suit property vacated from them and to put up them in possession of the same. Further stated that eventhough no decree was passed in favour of the said Jyothi, she and her brother in law who got the political influence. Hence, on their back, and eventhough 55/2026 was filed by the respondent but are now making forcible attempts to dispossess them from the suit property which is part and parcel of their property. The police have called him to the police station on 21.05.2026 and put threats on him to hand over the possession of 01 gunta his property by dismantling the compound wall. Eventhough he informed the fact of the pending Ex.55/2026, to the police they are not in a stage to hear their statement. Now the GPA of the plaintiff is making hectic attempts to dispossess them from their property.

It is further stated that it is quite apparent and proved in the trial through the deposition of PW.1 who specifically admits that the sharers and their legal heirs have been continued with the possession of their respective shares as per the partition deed of 1959. PW.1

specifically admitted in the cross examination to the effect that he tried to get the possession of suit property from the defendant by filing the complaint to the police and also admitted by PW.1 that the police have not extended their help to PW.1 to take back the possession of the suit property from the defendant, which clearly established that the plaintiff is not in actual possession of the suit schedule property. Now the trial court granted decree of permanent injunction against him, eventhough himself and sons of his uncle are in possession of the suit property. Thus if the operation of the judgment and decree is not stayed the plaintiff and their GPA holder till dispossess them from the suit property. Hence, he prays to allow the application.

Perused the appeal memo averments and also contents of affidavit filed along with I.A.No.1 and documents placed on record. Hence, at this stage the appellants have made out a Prima facie case to proceed against the respondent. If ex parte stay order is not granted, the filing the present appeal by the appellants will be defeated by delay. Since, the appellants challenged the judgment and decree passed by the trial court in OS No. 54/2016 by way of present appeal, the rights of the parties involved in the suit schedule

property are still consideration till disposal of this appeal. If the respondent is permitted to proceed further with the matter on the basis of decree passed in OS NO. 54/2016 by way of execution petition, the purpose of present proceedings will be defeated. Having considered the nature of the decree so passed by the trial court, this court is of the considered view that the appellants made out sufficient grounds for staying the operation of the decree so passed by the trial court is necessary. With these observations, in the interest of justice, I proceed to pass the following,

ORDER

IA No. 1 so filed by the appellants U/o 41 rule 5 of CPC is hereby allowed.

In the result the operation of the decree so passed in OS No.54/2016 on the file of II ACJ and JMFC Channagiri is hereby stayed till next date of hearing.

Issue notice against the respondent if PF paid. Call on regular date. i.e., 09.07.2026.

Sd/-

Sr. C. J. and JMFC, Cng.,