

16-06-2025

For orders

ORDERS ON I.A.No.I

The counsel for the appellant filed an application Under Order 41 rule 5(1) R/w Sec.151 of CPC seeking an order to stay the execution and operation of Oder passed by the I Addl. Civil Judge Hubballi in O.S. No.519/2014 dated

05.11.2024 till pending disposal of this appeal period.

2. In the annexed affidavit the appellant averred that, trial Court without considering the legal aspect and true facts passed an Order on I.A. No.11 dated:05.11.2024 in O.S. No.519/2014 is not sustainable under law and facts. Appellants are in possession of the suit property since more than 40 years and they have invested so much of amount for development of the suit property. The respondents taking undue advantage of the impugned order may file further proceedings eventually affecting their rights, and the impugned Order is not in accordance with settled principles of Law. Hence, they prayed for allow the application and stay the execution and operation of impugned Order as stated above.

3. The objection of the defendant No.1 and 4 is that under Order XLI Rule

5(1) of CPC is for the stay of execution proceedings and these respondents have not filed any of the execution proceedings against the appellants, whereas the learned Trial Court was pleased to pass an order as to rescind the agreement of sale dated:14.06.1994 and consequently, judgment and decree passed in O.S. No.214/2013 C/w in O.S. No.519/2014 dated:23.09.2023 is stand annulled. The appellants has not made any sufficient cause nor grounds to stay the learned Trial Court Order and no such relief is entitled by the appellants for staying the Trial Court Order unless the Court is satisfied that substantial loss may result the appellants applying for the stay of Trial Court Order if the Trial Court Order is not stayed and prayed to dismiss the application.

4. On the other other hand, respondent No.6 has filed objections to the application, taken contention that,

the application filed by the appellant is false, frivolous and vexatious one. It is not maintainable under law.

5. Further contended that, the Order XLI Rule 5 of CPC unequivocally states that a stay of proceedings and of execution of decree can only be granted in a pending appeal. The very existence of a duly filed appeal is a since qua non for the invocation of the power of stay a decree under this provision. The question of staying a decree simply does not arise when no appeal is maintainable without a decree. Allowing an application for stay of decree would cause irreparable loss and injustice to respondents. There is no appeal for the order passed by the trial Court under Sec.28 of Specific Relief Act. The present appeal and I.A. have been filed without there being any jurisdiction to this Court. Hence, prayed to dismiss the application with costs.

6. *Heard arguments.*

7. *On perusal of the application annexed to the affidavit and objections of the both sides.*

8. *The following points arise for my consideration is:-*

1) *Whether the appellant made out sufficient grounds to stay the execution and operation of Order on I.A. No.11 passed by the trial Court in O.S.No.519/2014 ?*

2) *What order?*

9. *My answer to the above points is as follows:*

Point No.1: In the affirmative

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

REASONS

10. **Point No.1:-** *This is the appeal preferred by the appellant against the Order passed by the I Addl. Civil Judge Hubballi on Order on I.A. No.11*

dated:05.11.2024 in O.S. No.519/2014. In the annexed affidavit along with this application, the appellant averred that, the respondents taking undue advantage of the impugned Order may file further proceedings eventually affecting the rights of the present appellant and the trial Court without considering the legal aspect and true facts passed Order on I.A. No.11 is not sustainable under law.

11. It is very pertinent to note here that the appellant taken specific contention that they are in possession of the property since more than 40 years and invested so much of amount for development of the suit property and they are going to grow sunflower crops but the respondents have taking undue advantage of the impugned order of the trial Court, they are trying to obstruct to their enjoyment of the suit property.

12. On careful perusal of the affidavit averments of the appellants it

is noticed to the Court that, this is the appeal filed by the appellant who was the plaintiffs before the trial court in O.S. No.519/2014 aggrieved by the impugned Order passed by the I Addl. Civil Judge, Hubli dt:05.11.2024 on I.A. No.11.

13. The counsel for respondents vehemently argued before the court regarding the appeal filed by the appellant is not maintainable. Hence, question of granting order which sought by the appellant cannot be granted.

14. Admittedly, it is a non executable decree and there is a possibility to cause interference to the possession of the appellant on the strengthen of the Order passed by the trial Court on I.A. No.11 in O.S. No.519/2014 dated:05.11.2024.

Further, it is noticed to the Court that there is a prima facie materials to proceed the case against the respondents. Therefore, if the

respondents based on Order on I.A. No.11 passed by the trial Court if proceeds with the possession of the appellant and if obstruct, then the appeal become infructuous and the rights of the appellant would be curtailed. Moreover in order to prevent irreparable injury or to preserve the subject matter of the suit or cause complications. More over appellate courts have the power under 41 Rule 5 of CPC to stay the operation of impugned orders where the balance of convenience, prima facie case and irreparable harm are shown, the matter is in respect of property is concerned, in such circumstances, if the stay is not granted, and if the succeeded party is taken benefit of Order passed by the Trial Court, definitely multiplicity of proceedings would arise. Hence, to avoid such complications and reserving the right of the respondents to hear the maintainability of the appeal, this court is of the opinion that the appeal would

be rendered nugatory without a stay. Hence, if the execution of Order in O.S.No. 519/2014 on I.A. No.11 is stayed no hardship would be caused to other side. Hence, I answer the point No.1 in the affirmative.

16. **Point No.2:** *On the aforesaid reasons, I proceed to pass the following:*

ORDER

I.A.No.I filed by the appellants under Order XLI Rule 5 r/w Section 151 of CPC is hereby allowed subject to condition that, the appellant shall complete their arguments within three months from the date of receipt of record of the trial Court.

Unless, the stay order will automatically cancelled.

Consequently, the Order passed by the Trial Court on I.A. No.11 dated:05.11.2024 in O.S. No.519/2014 is hereby stayed till further orders.

Office is hereby directed to intimate the same to the trial Court along with copy of this order forthwith.

Call for records and arguments.

By:03-07-2025

*I Addl. Senior Civil Judge and
JMFC, Hubballi*