

**R.A 35/20**

Heard on interim order I.A.No.1 and perused the records.

The appellant has filed I.A.No.I under Order 41 Rule 5 of C.P.C seeking stay of operation of judgment and decree passed in O.S.No. 100/2016 dated 04-08-2017. In support of his application, the appellant sworn to an affidavit and in his affidavit he stated that, in view of the above said judgment, FDP proceedings also filed in FDP No. 21/2017 and the court commissioner also issued notice for demarcation of the suit schedule properties, but he did not aware of the earlier suit as well as the above said FDP proceedings and when he received the notice of court commissioner at that time he came to know about the said cases and accordingly he prays to stay the judgment and decree of the above said O.S.No.100/206.

I have perused the I.A. and other materials available on records and on perusal of the same it is noticed that, the said judgment was passed about 2 years ago. However the appellant has produced copy of the notice issued by the A.E.E., i.e., the court commissioner for demarcation of the suit schedule properties. Further on perusal of the judgment it is noticed that, the present

appellant seems to be placed exparte and even though the defendant No.1 and 4 had appeared through their counsel, but they did not file their written statement and as such, an exparte judgment was came to be passed by the trial court.

Now in view of the above said FDP proceedings, the court commissioner also issued notice for demarcation of the schedule properties. Whether the present appellant is having a good case or not is a matter of trial. As such, if the judgment and decree of the trial court passed in O.S.No. 100/2016 are stayed, no harm or prejudice would be caused to the respondents. As such the appellant has made out grounds to allow the application and accordingly, I proceed to pass the following.

### **ORDER**

Operation of judgment and decree passed in O.S.No. 100/2016 are hereby stayed till next date of order or till appearance of the respondents whichever is earlier.

Office is hereby directed to send a copy of the same to the trial court and Issue notice to respondents if p.f. paid and call for LCR.

Call on :11-01-2020.

(got typed by myself)

**(PUTTASWAMY. K.M.)**  
**Senior Civil Judge and JMFC.,**

**Hirekerur.**