

ORDER ON I.A.No.VII

This is an application filed by the appellant under Order 41 Rule 5 R/w Section 151 of CPC seeking order to stay of operation and execution of decree passed by the trial court in OS No. 36/2002 dated 18.12.2003 till disposal of this appeal on merits.

2. The appellant No.10 has sworn to the affidavit and stated that, the respondents by taking the due advantage of judgment and decree passed in O.S No. 36/2002 have filed FDP No.6/2013 before the trial court and in hurry to execute the decree passed by the trial court. Therefore, since appeal is pending before this court as to decide the appeal on merits for fair trial and effective adjudication of real disputes, it is just and necessary to stay the execution and operation of the judgment and decree.

3. Per contra, the respondents have filed objections to the application and stated that, in order to drag on the matter from its final disposal of O.S No 36/2002 and to take undue advantage of the pendency of the appeal before this court, the appellants have filed present application which is not maintainable and liable for dismissal. It is also contended that, the trial court judgment was delivered on 18.12.2003 and hence, no such relief can be granted by staying execution and operation of the decree. The appellants by clever drafting of the fact of the FDP No.6/2013 pending for adjudication before the trial court. There will be no harm or injury caused to the appellants since the FDP proceedings continued before

trail court. Hence, for all these grounds the respondents have sought for dismissal of the application with cost.

4. Heard both side.

5. Perused the entire materials.

6. The points that arose for the consideration of this court are as here under;

1) Whether the appellants have made out grounds for stay of execution and operation of decree passed in O.S No.36/2002 dated 18.12.2003?

2) What order?

7. My answer to the above said points are as here under:

Point No.1: In the Affirmative

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

REASONS

8. **Point No.1:** The admitted fact before this court is that, this is an appeal arising out of the judgment and decree passed by trail court in O.S No.36/2002 dated 18.12.2003. The appellants have challenged the legality, reliability executability of the said decree by filing this appeal. It is also admitted fact that, the respondents have filed FDP No. 6/2013 in order to get fruits of preliminary decree passed in OS No.36/2002. Keeping in mind of the same what the law say when the appeal is pending on decree passed by the trail court. It is well settled law that, an appeal is a continuation of original suit. It is the apprehension in the mind of present

appellants that, the respondents by taking aid of the preliminary decree may proceed and get the final decree. If it is done the appeal became infructuos. On the other hand as rightly pointed by the learned Advocate for respondents, the FDP proceedings is also continuation of suit. If these all material facts taken into consideration then, FDP proceedings is pending before trial court whereas the present appeal against the judgment and decree is pending before this court. If at all the matter before trial court being proceeded and final decree passed thereon then, there will be conflict in judgment which likely delivered by this court. The appeal is also pending and the FDP proceedings also pending. There is no finality in the judgment of O.S No.36/2002. As because the appellants have questioned the judgment before this court. The legality and reliability, executability of a decree is not question before this court for the purpose of present application as the trial court records have been secured and the arguments yet not concluded in the matter. If the final decree is drawn in the FDP proceedings then there will be no useful purpose served in the present appeal. In this regard as to stay the execution and operation of the decree the court bound to look into the fact whether the order or decree is executable decree or not and if it is executed then who will suffer much more. In this regard, Order 41 Rule 5 of CPC is incorporated in CPC to avoid such harm to the parties. Therefore, the present decree passed in O.S No.36/2002 comes in the preview of the executable decree. The appellants have prayed to stay the execution and operation of the decree but here it is well settled law that, the trial court may proceed further in the matter until drawing of final decree but shall

reserve to pronounce the judgment and decree and bound to wait till delivery of judgment in appeal. Hence, looking to the all aspects of the matter there are sufficient grounds made available in the matter as to stay the execution and operation of the decree with above condition. Hence, point No.1 is answered in the **Affirmative**.

9. **Point No.2**: For the reasons discussed herein above, I proceed to pass the following:

O R D E R

I.A VII filed under Order 41 Rule 5 R/w Sec.151 of CPC is hereby allowed.

Resultantly, the execution and operation of the decree passed by the trial court in O.S No. 36/2002 dated 18.12.2003 is hereby stayed till disposal of this appeal.

However, as per observations made out by this court the trial court may proceed with the matter but not to draw final decree until the disposal of present appeal on merits.

***For hearing on IA No.3 and 4
Call on 14.08.2026.***

**Senior Civil Judge & J.M.F.C.,
Shiggaon Sitting at Savanur.**

