

**ORDERS ON I.A. NO. II U/ORDER 41 RULE 5
R/W SECTION 151 OF CPC.**

The appellant has filed this application U/O 41 Rule 5 R/w Section 151 of CPC sought to stay of further proceedings in FDP No. 9/2025 till disposal of the appeal.

The appellant has sworn to an affidavit in support of IA and stated that the he had filed this appeal and challenging the judgment and decree dated 24-11-2025 passed in O.S. No. 48/2022 by the learned Prl. Civil Judge Court, Chincholi. In the said suit was decreed for partition and separate possession against him and other defendants. Said judgment and decree are illegal, opposed to facts and law and the same are challenged in this appeal on strong and substantial grounds. Based on the said preliminary decree, the respondent No. 1 has initiated final decree proceedings in FDP No. 9/2025, which is now pending before the trial Court. Further stated that, he neither other defendants had proper knowledge and opportunity to contest the original suit proceedings and the decree came to be passed without effective participation from his side. The FDP proceedings are continued during the pendency of this regular appeal, if the final decree is passed and properties are divided it will create multiplicity of proceedings and complications. The very purpose of filing the appeal will be defeated. Hence, he prays to stay further proceedings in FDP No. 9/2025 arising out of O.S. No. 48/2022.

The respondents No. 1, 2, 5, 6, 7, 8 and 9 are remained absent even though service of appeal notice and not contest the appeal petition.

Perused the records. Heard arguments.

On perusal of the records, it is found that, the respondents have filed suit for partition and separate possession in respect of suit schedule properties before the trial court and the said suit was decreed on dated 24-11-2025 in O.S. No. 48/2022. Then the present regular appeal has been filed by the aggrieved party on various grounds.

Further the appellant has filed memo with documents reveals that the respondents obtained non-contested partition decree in O.S. No. 48/2022 dated, 24-11-2025 and final decree proceedings have already been initiated. The Court commissioner has also submitted his report based on the said non-contested partition decree. Therefore, if the Court waits for the appearance of respondent No. 3 and 4 before passing order on I.A. No. II, the very purpose of filing the present appeal will be defeated. Therefore, in order to avoid future inconvenience and difficulties, it is just and necessary to stay only drawing of final decree in FDP No. 9/2025. Hence, the following:

ORDER

The application filed by the appellant U/O 41 Rule 5 R/w Section 151 of CPC is hereby allowed subject to only drawing of final decree in FDP No. 9/2025 is stayed and trial Court can proceed with FDP proceedings except drawing of final decree till disposal of this appeal.

The appellant is hereby directed to cooperate to this Court for early disposal of present appeal.

The appellant shall take steps against respondent No. 3 and 4 as early as possible and also argue the matter as early as possible to dispose off the present

appeal, failing which, this order stands vacated automatically.

Office is hereby directed to intimate this stay order to the trial court in FDP No. 9/2025 on the file of Prl. Civil Judge & JMFC Court, Chincholi if P.F. paid.

Issue appeal notice to respondent No. 3 and 4 if P.F. Paid.

Call for trial court records by 30-04-2026.

Senior Civil Judge & JMFC, Chincholi.