

1. The present appeal is filed by the appellant who was defendant No.1 in O.S No.85/2002. The said suit was decreed on dated: 20-09-2005 by the Prl. Civil Judge & JMFC Chincholi. Being aggrieved by the Judgment and decree passed by the trial court, the defendant No.1 has preferred this present appeal. The appellant has filed application U/o 41 Rule 5 of CPC seeking to stay the operation and

execution of the judgment of trial court till disposal of the appeal. The suit was filed by the plaintiffs in representative capacity seeking declaration, possession of suit property.

2. The appellant contends that, the defendant No.1 is in settled possession of the suit property since the date of purchase the sale deed executed by Ismailsab was not declared null and void. The suit of the plaintiff was decreed declaring that the sale-deed executed by Ismailsab dated: 08-04-2008 and the judgment and decree of O.S No.85/2002 dated: 20-09-2005 are not binding on the public in general. The defendant No.1 being the resident of Saleberanahalli village comes in the definition of the public. It is further stated that the respondent No.1 to 10 and 13 to 17 by virtue of the judgment and decree are trying to disposes the defendant No.1 from the suit schedule property. There is cattle shed, fodder agglomerate, manure pits and agricultural establishment in the suit property. If the respondent No.1 to 10 and 13 to 17 disposes the defendant No.1 from the possession of the suit property, the defendant No.1 will be put to loss injury which cannot be compensated in terms of memo. Thus he prayed to allow the application.

3. The order sheet shows that caveat No.6/2024 was pending and thus notice was issued to the caveator. Counsel Sri. JPA appeared for caveator that is plaintiff No.1 in the Original Suit. Sri. JPA filed objections to I.A No.I contending that the present application is not maintainable. It is denied that defendant No.1 being the resident of Saleberanahalli village comes in the definition of the public. It is denied that the respondent No.1 to 10 and 13 to 17 by virtue of the judgment

and decree are trying to disposes the defendant No.1 from the suit schedule property. It is denied that there is cattle shed, fodder agglomerate, manure pits and agricultural establishment in the suit property. It is contended that for the welfare of students, the deputy commissioner has granted 3 acres of land in the suit property for construction of School. It is denied that the defendant No.1 is in settled possession of the suit property since the date of purchase. It is further contended that the application is allowed it will cause loss to the students and public. Thus prays to reject the application.

4. Heard learned counsel for the appellant and learned counsel for the respondent No.1. Perused the entire materials on records and the grounds of appeal.

5. Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:

1. Whether the appellant has made out sufficient grounds for allowing the application?
2. What order?

6. My answers to the above points are as under:

Point No.1: In Affirmative.

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

R E A S O N S

The trial court has decreed the suit O.S No. 71/2010 and declared that *suit schedule property is a government land being utilized for public purpose. It is declared that the sale-deed executed by Ismail Sab dated: 08-04-2008 and the*

judgment and decree of O.S No.85/2002 dated: 20-09-2005 are not binding on the public in general. It is further ordered that the defendant No.7 deputy commissioner of Kalaburagi is directed to take possession of the suit property for public utility with in three months from the date of Judgment. The grounds made out by the defendant No.1, in his application, grounds of appeal, and the materials placed on record does warrants this court to stay the execution and operation of the judgment and decree till expiry of the appeal period in the interest of justice. Therefore, I proceed to pass the following:

ORDER

The Application filed by the appellant U/o 41 Rule 5 of CPC is allowed.

The operation and execution of the decree in O.S No.71/2010 dated:07-02-2024 is hereby stayed till further orders.

Office is directed to issue intimation to the trial court regarding stay of the operation and execution of the decree in O.S No.71/2010 dated:07-02-2024.

Issue summons to respondent No.2 to 17 through RPAD and call for trial court records.

Call on 17-04-2024.

**Senior Civil Judge & JMFC.,
Chincholi.**