

**Order on I.A.No. 7 U/O 41 Rule 5 of
CPC.**

The appellant has filed this application U/o 41 Rule 5 of CPC and sought to stay the execution and operation of the judgment and decree passed by the Prl.Civil Judge & JMFC, Chincholi in O.S. No. 46/2011 dated 20-03-2020.

2. The appellant has sworn to an affidavit in support of the I.A. and stated that the respondents have filed execution petition seeking recovery of possession in pursuance of the decree passed in O.S. No. 46/2011. The appellant/defendant No. 1 have also filed appeal before Senior Civil Judge, Chincholi challenging the judgment and decree passed in O.S. No. 46/2011. During the pendency of the appeal the respondents have filed E.P. Hence, prays to allow the I.A.

3. The respondents have filed objections to I.A. and contended that the respondent and others had filed suit for partition and separate possession on the file of the Civil Judge & JMFC Chincholi in O.S. No. 46/2011 and the same was decreed on 09-12-2013. Thereafter FDP No. 4/2014 was filed and In the FDP final decree was drawn. Thereafter the respondents have filed execution petition seeking delivery of possession. The appellant did not file application seeking stay of the judgment and decree in O.S. No. 46/2011 immediately after passing preliminary decree. Now with an intention to delay the proceedings he has filed this application. Hence, prays to allow the I.A.

4. Perused the records. Heard arguments.

5. The records reveal that the respondents and others had filed suit for partition in O.S. No. 46/2011 and the same was decreed. Thereafter FDP No. 04/2014 was filed and in which final decree was drawn. In pursuance of the final decree the respondents had filed execution petition before the trial Court seeking delivery of possession. The appellant has filed this appeal challenging the final decree passed in FDP No. 04/2014. It is to be noted that the appellant had filed this appeal aggrieved by the final decree drawn in FDP No. 04/2014. He had also filed another appeal challenging the preliminary decree passed by the trial Court in O.S. No. 46/2011. If during pendency of these two appeals if the appellant obtain delivery of possession of the properties of his share then the very purpose of filing two appeals by the appellant will become infructuous and no purpose will be served. Therefore this court find it just and proper to stay the further proceedings in E.P. No. 6/2021 and hear arguments of both the parties in both the appeals by giving sufficient

opportunities to both the parties and dispose both the appeals expeditiously. In such an event complication of the matter and delay can be avoided. Further on perusal of the records it appears that the appellant is having good case to urge before this Court. Hence, the following:

ORDER

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

The execution and operation of the judgment and decree passed by the Civil Judge & JMFC, Chincholi in O.S. No. 46/2011 and final decree passed in FDP No. 04/2014 are hereby stayed for a period of three months.

Both the parties are hereby directed to cooperate the Court in disposal of both the appeals expeditiously.

C/C Senior Civil Judge & JMFC,
Chincholi.