

ORDER

The Appellant / Applicant has filed I.A.No.III under Sec.151 of CPC praying to stay the operation of final Decree dated 14/12/2009 in FDP.No.3/2020 on the file of Hon'ble Small Causes Court and Senior Civil Judge at Mysuru.

2. Perused the application, case records and heard the learned counsel for the Appellant.

3. The decree under challenge is the Preliminary Decree passed in the suit for partition. The Appellants have stated that the Final Decree proceedings are already initiated. Hence, it would meet the ends of justice if the only drawing up of the final decree is statyed. The Appellants must be directed to proceed with the hearing of the Appeal immediately on the appearance of the Respondents.

4. There is delay in filing the Appeal. The learned counsel for the Appellant has relied upon the following rulings wherein it is held that though there is a delay in filing the Appeal and an application for condonation of delay is pending, the stay of the Decree can be passed.

1. 1987 (2) BomCR 153 in the case of Bhagwan S/o Ganpatrao Godsay V/s Kachrual S/o Bastimal Samdariya.

There are the following rulings to the same effect.

1. AIR 1974 (Mad) 220 in case of Gouse Bi vs. Salima Bi.
2. (1994) AIR (Kerala) 35 in case of State of Kerala vs. C.U.Scaria and another.
3. (2017) 3 ILR (HP) 712 in case of Smt.Ajudhya Devi vs. Shri Pramod Kumar Sharma.

5. Therefore, this Court has got power to pass the order as below. Hence, this Court proceeds to pass the following:

ORDER

The Trial Court is at liberty to proceed with the proceedings in FDP.No.3/2020 in pursuance of the preliminary decree in OS.No.119/2002 passed by it till the drawing up of the final Decree.

The Trial Court is at liberty to proceed with the proceedings and also pass the final order regarding the allocation of the shares in pursuance of the final decree and only the drawing up of the final decree is stayed.

Issue notice of the Main Appeal and of IA.No.I to I.A.No.III and also the stay order to the respondents through Court process if PF paid.

By 23/12/2021.

(J.R.Mendonca)
III Addl. District & Sessions Judge,
Mysuru.