

Order on I. A No.I

The application I.A.No.I is filed by the Appellant/Defendant U/O 41 Rule 5 of CPC to stay the operation of judgment and decree in O.S.No.195/2019 on the file of Additional Civil Judge and JMFC dated 13.01.2025.

2. The application is supported by affidavit of the appellant and it is sworn that the Appellant has preferred to the appeal against judgment and decree passed in O.S.No.195/2019 dated 13.01.2025 on the file of II Additional Civil Judge and JMFC, H.D.Kote. It is further sworn that the respondent had filed the suit before trial court for the relief of permanent injunction and the learned trial court had decreed the said suit without looking into the pleadings and evidence. It is also sworn that the Appellant is in possession and enjoyment of the property bearing Sy.No.48/1 measuring 11.08 acres in Sy.No.481/1 situated at Sagare Village but the plaintiff after passing of the judgment by the trial court, interfering with property of the Appellant/Defendant. It is also sworn that the Appellant got good grounds to urge before this Appellate Court. It is also sworn that if the respondent change the nature of the suit, the very purpose of filing the present appeal would be infructuous. Hence, prayed to stay the operation of judgment passed by the trial court.

3. Heard the arguments of counsel for appellant.

4. The points that arise that consideration of this court are as under:

P O I N T S

Point No.1:- Whether the Appellant has made out sufficient grounds to stay the operation of learned trial court judgment and decree?

Point No.2:- What order?

5. The findings of this court on above points are as under:

Point No.1 :-In Affirmative

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

R E A S O N S

Point No.1:

6. The Appellant has filed the present application to stay the operation of judgment and decree passed by the learned trial court in O.S.No.195/2019 dated 13.01.2025 by dispensing the notice to the respondent. Along with the Memorandum of Appeal, the appellant has produced the copies of judgment and order sheet relating to said suit and also acknowledgment issued by Saragur police dated 05.03.2025. On perusal of the said materials available on record the present the respondent had preferred had filed a suit for permanent injunction and the learned trial court after full fledged trial had decreed the suit filed by the plaintiff. Against the said judgment and decree, the present Appellant has preferred the appeal before this court. The Appellant by swearing the affidavit has stated that after passing of the said judgment by the trial court the respondent

interfering with the property of the Appellant bearing Sy.No.481/3 measuring 11½ guntas. As per order 41 Rule 5 of CPC the Appellate Court has stay the operation of judgment and decree passed by the learned trial court if the sufficient cause has been shown for the same. In the present case as it is stated above, the learned trial court has decreed the suit filed by the plaintiff and the Appellant sworn that he is in possession of property bearing Sy.No.481/3 measuring 11½ guntas the respondent is trying to interfere with the said property after passing the judgment by the trial court. Since there is possibility of changing the nature of the schedule property, operation of judgment and decree should be stayed until appearance of the respondent. Hence, for the said reasons, this court answers point No.1 in Affirmative.

Point No 2:

7.. For the reasons discussed above this court proceed to pass the following:

O R D E R

Issue an order of interim stay, staying the operation of the judgment and decree passed in O.S.No.195/2019, dated 13.01.2025 on the file of II Additional Civil Judge and JMFC, H.D.Kote till next date of hearing.

Issue notice on IA No.I and on main appeal to the respondents.

Call on 24.04.2025.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 17th day of March, 2025)

(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote