

ORDER ON IA NO.I

Provision under which the application is filed	U/Sec.41 rule 5 R/w.Sec.151 of C.P.C.
Relief sought for	To stay the operation and execution of the judgment and decree.
The date on which the application is filed	29.07.2024
Number of the application	IA No.I
The date on which the objections are filed by different opponent	16.06.2025
The date on which the orders were passed on the said application	18.07.2025

The appellant/ defendants filed this application U/o.41 rule 5 R/w.Sec.151 of CPC to stay the operation and execution of the judgment and decree dated 26.02.2024 passed by the Civil Judge, Devadurga in O.S.No.39/2017 till disposal of the appeal.

2. In the affidavit contended that, the trail court disposed the suit in O.S.No.39/2017 on 26.02.2024 in favour of plaintiffs who are the respondent no.1 and 2. The appellants are the defendant no.3, 5 and 7 in the said suit. The plaintiffs are no way concerned to the suit land, the judgment and decree is illgal and not made on merits of the suit. The suit was not maintainable under eye of law. The judgment and decree are not based on any legal and considerable evidence. Now the

respondent have filed FDP No.3/2024 and said respondents are in hurry to get the judgment and decree to be executed and if the said judgment and decree are executed this appellant will put to grate injustice. Hence it is necessary to allow the application. Hence prays to allow the application.

3. On the other hand, the respondent/ plaintiff filed objection, in the objection contended that the application is liable to be dismissed. The appellant is misguided the court. Though the judgment passed on 26.02.2024 but the present application filed at belated stage which is not maintainable. The O.S.No.39/2017 was decreed earlier as exparte later appellants were moved this Hon'ble Court with necessary applications and matter was remanded back with direction to the defendants to lead evidence. The plaintiff filed the FDP No.3/2024 already court commissioner has conducted survey as per preliminary decree and submitted his report with sketch. To drag on the case filed this application. Hence with these set of contention prays to reject application.

4. Heard both side.

5. After going through the material available on record the plaintiff filed this application to stay the operation and execution of the judgment in O.S.No.39/2017 dated 26.02.2024. The plaintiffs have filed suit for partition. The said suit came to be decreed by the trial court being aggrieved by

the judgment the appellant preferred this appeal along with this application. The appellant contended that the respondents have filed FDP and already court commissioner has conducted survey as per preliminary decree and submitted his report. At the time of hearing the appellant filed memo along with commissioner report submitted in FDP No.3/2024. Considering entire material the appellant preferred this appeal with allegation on the trial court that the trial court has not considered the evidence of the parties and judgment is not in accordance with law. Then the respondent contended that initially the said suit was decreed as *ex parte*. Subsequently the present appellant preferred the appeal and get remanded the case and after giving opportunity the trial court passed the judgment and decree. The present appellant filed this appeal along with this application. As per the records the respondent have filed FDP and already the commissioner has submitted his report on preliminary decree. Hence under such circumstances if at all FDP is disposed then it will lead to multiplicity of proceedings and also false caused to irreparable injury. Hence this court is of the opinion that the trial court should proceed the FDP case till the passing of judgment and not to pass the judgment in FDP No.3/2024 till disposal of this appeal or 06 months whichever is earlier from the date of this order. Hence this court proceed to pass the following;

ORDER

I.A.No.1 filed U/o.41 rule 5
R/w.Sec.151 of CPC is hereby partly
allowed.

The trial court is directed to not to
pass the final judgment on FDP No.3/2024
till disposal of this appeal or 06 months
which ever is earlier.

Further trial court is directed to
proceed the FDP proceedings and not to
cause final judgment on FDP till the
disposal of this appeal or 06 months
which ever is earlier.

Call on for trial court records.

Call on 20.08.2025.

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