

KAUK510004852024



Presented on : 20-04-2024

Registered on : 20-04-2024

Decided on : 11-09-2024

**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL**  
**AT: HALIYAL, UTTARA KANNADA**

**Dated this 11<sup>th</sup> day of September, 2025**

**PRESENT**

**Smt. Geeta.** B.A.LL.B (Hon's) LL.M.,  
Civil Judge and JMFC, Haliyal

**ORIGINAL SUIT NO.64/2024**

**BETWEEN:**

1. Gourakka W/o Hanumanth Hanchinmani,  
Age: 52 years, Occ: Agriculturist,  
R/o : Nandigadda Village,  
Haliyal Taluka.

**.....Plaintiff**

**(By Sri. S.S.B., Adv.,)**

**AND:**

1. Hanmanth S/o Irappa Chalwadi,  
Age: 60 years, Occ: Agriculturist,  
and Others.

**....Defendants**

**(D-1, 3, 4, 5(a to c), 6, 7, 8 Exparte)**

**(D-2 By Sri. P.B.A, Adv.,)**

**I.A.No.II**

**Applicants/Defts : Hanmanth S/o Irappa Chalwadi  
and Others.**

**-Vs.-**

**Opponent/Pliff : Gourakka W/o Hanumanth  
Hanchinmani.**

**ORDER ON I.A.NO.II**

The defendants filed I.A No.II under Order XLI Rule 5(2) R/w Section 151 of C.P.C., praying to stay the execution and operation of the order on I.A No.I dated 09.07.2025 till appeal period is over in the interest of justice and equity.

2. In the affidavit, the defendant no.2 stated that, Court passed order on I.A No.I on 09.07.2025 and he has applied for certified copy of the said order and the same is not available on account of the non-availability of xerox facility. The defendant no.2 stated that, he intend to prefer a Miscellaneous Appeal against the concerned order for which, the certified copy of order is required. It may take some reasonable time to get the concerned certified copy from the office. There is possibility of misuse of the order by the plaintiff or somebody else on her behalf. Therefore, the defendant no.2 prayed to pass an order as prayed in the application.

3. The plaintiff counsel filed objections to the application contending that, application is false and frivolous. The plaintiff had

filed this suit for the relief of injunction along with I.A No.I praying to restrain the defendants from interfering with plaintiff's peaceful possession, wahivat and enjoyment of the suit property and said I.A was allowed by the Court restraining the defendants from interfering with plaintiff's possession till disposal of the suit. It is stated that, the provisions of Order 41 of C.P.C., exclusively applies to appeal proceedings and defendants have filed instant application under Order 41 Rule 5(2) of C.P.C., which has no applicability in the suit. The staying of operation and execution of orders passed on I.A No.I is not at all material and within the jurisdiction of this Hon'ble Court. It is a matter of appeal proceedings but, astonishingly defendants have preferred such application before this Court when original suit is pending for adjudication. With these contentions, the plaintiff prayed to reject the application.

4. Heard both counsels and perused the records.

5. Now the points that arise for consideration are as under;

**1. Whether defendants have made out grounds to stay the execution of order on I.A No.I?**

**2. What order?**

6. Answers on the above points are as under;

**Point No.1 : In the Negative**

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

## **REASONS**

**7. POINT NO.1:-** The plaintiff filed this suit for the relief of permanent injunction along with I.A No.I praying to restrain the defendants, their agents, servants or anybody claiming through them from interfering with plaintiff's peaceful possession, wahivat and enjoyment of suit property i.e., property carved out by the Commissioner in FDP No.3/2013. After contest, this Court passed an order on I.A No.I on 09.07.2025, immediately, the defendants have filed this application praying to stay the execution and operation of order on I.A No.I. The counsel for plaintiff objected to the application contending that, application is not maintainable and order cannot be stayed as per Order 41 Rule 5(2) of C.P.C.

**8.** On perusal of order on I.A No.I, this Court passed an order restraining the defendants or anybody on their behalf from interfering with plaintiff's peaceful possession, wahivat and enjoyment of suit property. This Court has not passed any executable order in I.A No.I, it only passed restraining order against the defendants. Therefore, question of execution of order on I.A No.I does not arise. Further, as per Order 41 Rule 5(2) of C.P.C., where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may on sufficient cause being shown order the execution to be stayed. From the provision it is clear that, court which passed the decree, can decree can be stay the operation of decree till appeal period is over, said provision not applies to orders. The word used in the

provision is “decree” not “order”. Therefore, the application filed by the defendants under Order 41 Rule 5(2) of C.P.C is not maintainable. Even though if the application is considered under inherent power of Court i.e., under Section 151 of C.P.C., there is no executable order against the defendants, it is only restraining order, therefore, there is no substance in staying the order on I.A No.I. Under such circumstances, the defendants have not made out grounds to allow the application. Hence, **I answer Point No.1 in the Negative.**

**9. POINT NO.2 :-** In view of discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following;

**ORDER**

**I.A.No.II filed by the defendants  
under Order XLI Rule 5(2) R/w  
Section 151 of C.P.C., is hereby  
rejected with cost of Rs.300/-.**

**For Issues, call on 08.10.2025.**

(Dictated to the Stenographer directly on system, typed by her, then corrected, signed and pronounced by me in the Open Court on this the **11<sup>th</sup> day of September, 2025**)

**Sd/-  
(Geeta)  
Civil Judge & JMFC.,  
Haliyal**