

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

41 CIVIL APPLICATION NO. 15227 OF 2015
IN SA/234/2002

BAPURAO KISHAN GAIKAR AND OTHERS
VERSUS
DATTA KISHAN GAIKAR AND ANOTHER

...
Advocate for Applicants : Kale Mahesh P.
AGP for Respondents 1 & 2 : Shri S.v. Warad

...
CORAM : T.V. NALAWADE, J.
DATED : 9th March, 2016.

ORDER :

1. The application is filed by original plaintiffs for permission to withdraw the amount of Rs. 1,00,000/- deposited by the present applicant No. 1, original plaintiff in this Court.

2. It is contended that the decree of partition is executed and the possession was given to plaintiffs. This Court had made an order of statusquo in August 2003 and the appeal was admitted on 1.3.2004. It appears that the property, so called share of plaintiff, was sold by him on 24.1.2005. Due to this circumstance, contempt proceeding was filed against him. It appears that while disposing of the contempt proceeding, this Court had directed the present respondents, appellants to deposit the amount of Rs. 1,00,000/-, the amount towards sale proceeds, in the Court. This order was challenged in L.P.A. No.

4609/2012. In L.P.A. also, direction was given to present applicants to first deposit the amount in second appeal. Due to this circumstance, the amount is pending in the Second Appeal.

3. The learned counsel for applicants, original plaintiffs submitted that for some time, there was no order of statusquo and so, it cannot be said that there was any contempt. He further submitted that there was no power with this Court to give direction to deposit the amount and so, the present applicants, plaintiffs are entitled to take back that amount.

4. The aforesaid contentions made by the plaintiffs are considered in L.P.A. also and they are rejected. Admittedly, the amount is of sale proceeds of the property. Appeal is admitted. In view of these circumstances, to protect the property, this Court holds that permission cannot be granted to take back that amount.

5. In the result, the application is rejected.

6. List the appeal itself for final hearing on 7.4.2016.

[T.V. NALAWADE, J.]

ssc/