

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 1373 OF 2018 IN SA/646/2012

GOVARDHAN MOHAN DONGARE AND ANR
VERSUS
SURESH MOHAN DONGARE AND ANR

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Advocate for Applicants : Mr. S. B. Choudhari
Advocate for Respondent no.2 : Mr. N. B. Jadhav

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CORAM: V. K. JADHAV, J.
DATED: 9th February, 2018.

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PER COURT :-

1. Heard.
2. The learned counsel for the applicants submits that the applicants-original plaintiffs have instituted the suit to enforce their right of preemption to purchase the suit land. The trial court has decreed the suit and directed the applicants-plaintiffs to deposit an amount of Rs.55,000/- in the court on or before 19.06.2006 for getting executed the sale deed from defendant no.2. Being aggrieved by the judgment and decree passed by the Trial Court, original defendant no.2 has preferred an appeal bearing Regular Civil Appeal No. 80 of 2006 and the First Appellate Court has allowed the said appeal and dismissed the suit filed by the present applicants-

original plaintiffs. Being aggrieved by the said order, applicants-original plaintiffs preferred this second appeal before this court and the same is pending.

3. During the pendency of this second appeal, the applicants-original plaintiffs approached the Trial Court for refund of the said amount of Rs.55,000/- deposited in the year, 2006 without prejudice to the rights of the applicants. However, the Trial Court has refused to entertain the said application on the ground that second appeal is pending before this court.

4. The learned counsel for respondent no.2 has no objection if the original plaintiffs are permitted to withdraw the said amount deposited before the Trial Court.

5. In view of the above and for the reasons stated in the application, applicants-original plaintiffs are permitted to withdraw the said amount deposited before the Trial Court without prejudice to their contentions raised in the second appeal, which is pending before this court along with accrued interest. Civil application accordingly disposed of.

(V. K. JADHAV, J.)

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