

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

907 CIVIL APPLICATION NO. 4251 OF 2018
IN FA/3323/2017 WITH CA/11104/2017 IN FA/3323/2017

DATTATRAYA SUDHAKARRAO DESHPANDE
VERSUS
AMBAJOGAI PEOPLES CO OPERATIVE BANK LTD., THR ITS
CHAIRMAN RAJKISHOR K MODI AND ORS.

Advocate for Applicants : Mr. S.G. Jadhavar
Advocate for Respondent No. 1.: Mr. A.S. Kakade, h/f Mr.
V.D. Salunke
Advocate for Respondent Nos. 3 to 7:
Mr. S.G. Chapalgaonkar

CORAM : A.M. DHAVALÉ,J.

DATE: 27th JULY, 2018

PER COURT:-

1. Heard learned advocate Shri. Jadhavar for the applicant, advocate Shri. A.S. Kakade holding for Mr. V.D. Salunke for respondent No.1 and Advocate Shri.S.G. Chapalgaonkar for Respondent Nos. 3 to 7
2. It is submitted that by agreement dated 24th February, 2010, Sudhakar Deshpande, father of the present applicant agreed to sell his house property to respondent No.1 – Ambajogai Peoples Co-op. Bank Ltd. Ambajogai for consideration of Rs.1,29,00,000/- and amount of

Rs.65,00,000/- was advanced at the time of or before the agreement. The said money was deposited in the account of Sudhakar Deshpande. The bank filed suit for specific performance of the contract. It was decreed and the bank has deposited the balance of Rs.64,00,000/- in the trial court.

3. Admittedly, Sudhakar Deshpande died on 08.04.2010 i.e. before filing of the suit. It is grievance of the present applicant that he is one of the legal heirs of Sudhakar Deshpande and the amount deposited in his account was distributed by other legal heirs among themselves to the exclusion of him. He seeks directions of this court to permit him to withdraw Rs.10,00,000/- with interest as his 1/6 share.

4. The prayer made is not directly related to the dispute involved in the present appeal. This court has only to consider whether there was specific agreement or specific performance and whether the same is to be enforced or not. The dispute regarding distribution of the consideration among the heirs inter se will have to be decided by

separate proceedings for succession. Therefore, this prayer cannot be entertained in this petition. Hence, the Civil Application deserves to be dismissed and is accordingly dismissed. The applicant is at liberty to avail of other legal remedies available in law.

5. Civil Application stands rejected.

(A.M.DHAVAL, J)

mta