

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

**936 CIVIL APPLICATION NO. 9969 OF 2018
IN SA/712/2008**

**AMBADAS SURYABHAN KARHALE THR LRS GANGUBAI (DIED)
AND OTHERS
VERSUS
BAJIRAO SHANKARRAO KALE (DIED) THROUGH LRS**

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Advocate for Applicants : Ms. Geeta L. Deshpande
Advocate for Respondent No.1 : Mr. P.B. Rakhunde

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CORAM : V.L. ACHLIYA, J.

DATED : 21st SEPTEMBER, 2018

PER COURT:-

1.The applicants – plaintiffs have moved this application seeking the following reliefs:-

- (A) This application may kindly be allowed
- (B) The applicants may kindly be allowed to withdraw the amount deposited by the appellant.
- (B-i) As the appellant failed to deposit Rs.5,000/- for consecutive four years, the order of interim relief dt. 18.12.2008 is automatically vacated. This Honourable Court may kindly direct to proceed R.D. No.7/2016 pending before the learned Civil Judge, Junior Division, Partur.
- (C) As the applicants' Execution is stayed, the Second Appeal may kindly be fixed for final hearing.
- (D) Any other suitable order/relief may kindly be passed in favour of the applicants in the interest of justice.

2. Heard the learned counsel for the applicants – plaintiffs and perused the order dated 18.12.2008 passed in Civil Application No.7213 of 2007 in Second Appeal No.712 of 2008, which reads as under:

“1. Heard Shri Rakhunde, learned Counsel for the applicant and Mrs. Geeta Deshpande, learned Counsel for the Respondents No.1-B to 1-I.

2. Interim relief in terms of prayer clause (C) on condition of applicant-appellant's depositing Rs.5000/- (Rs. Five thousand) every year in this Court. The amount for the year 2008 shall be deposited before the end of 31st January 2009 and the amount for subsequent years shall be deposited before the end of June of the relevant year. Any consecutive two defaults in making deposits, as stated above, shall entail in revocation of the order automatically without reference to the Court.

3. Civil Application stands disposed of.”

3. Learned counsel for the applicants – plaintiffs submits that since last four years, the respondents – appellants have not deposited the amount. Although the order dated 18.12.2008 clearly provides that, in case of any consecutive two defaults in making deposits would lead to revocation of the order still the executing Court is not proceeding with the execution proceeding. She therefore urged to allow the applicants to withdraw the amount, and in the alternative, direct the executing Court to proceed with the execution of application.

4. Learned counsel for the respondent – appellant submits that registered sale deed in respect of the suit property is executed in favour of the respondent – appellant. The respondent – appellant is claiming that the sale deed is executed in his favour. He further submits that though the suit was dismissed, the appellate Court has allowed the appeal.

5. Considering the order dated 08.12.2008, it no where provides for liberty to applicant to withdraw the amount. The appeal filed by appellant is pending. Hence, the request for withdrawal of amount cannot be entertained at this stage. So far as alternative relief claimed, the order dated 18.12.2008 itself provides for consequences to follow in default of deposit of amount in terms of order, no further direction needs to be issued to executing Court. I am therefore not inclined to entertain the application. The application is rejected.

6. List the appeal for final hearing in the week commencing from 03.12.2018.

(V.L. ACHLIYA)
JUDGE

SPR