

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

949 CIVIL APPLICATION NO.5421 OF 2019
IN SA/579/2015

BARAKU SARADAR PATIL AND ANOTHER
VERSUS
GORAKH SARDAR PATIL

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Advocate for Applicants : Shri Savale Amit S.
Respondent Gorakh Sardar Patil in person present.

CORAM: V.L. ACHLIYA, J.

DATE: 09.08.2019

PER COURT :

1] The applicants – original appellants in Second Appeal No.579/2015 have moved this application seeking permission to withdraw the amount of Rs.1,33,635/- deposited vide Receipt No.008634 dated 20.11.2015 together with interest.

2] Learned counsel for the applicants submits that the respondent – plaintiff had filed suit for possession and recovery of *mesne* profits in the Court of learned Civil Judge, Senior Division, Dhule. The suit was decreed in favour of respondent – plaintiff. The applicants – defendants preferred appeal before the

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District Court with application seeking condonation of delay. The first appellate Court refused to condone the delay and rejected the application alongwith the appeal. Being aggrieved, the appellants preferred Second Appeal No.579/2015 with Civil Application No.13863/2015 challenging the order passed by the first appellate Court. The appeal was taken up for hearing on 21.10.2015 and by the order passed by this Court (Coram: T.V. Nalawade, J.), the notice of appeal as well as stay application was sent to respondent. Liberty was granted to get circulation after deposit of decretal amount. Pursuant to order dated 21.10.2015, the applicants have deposited Rs.1,33,635/- in this Court vide Receipt No.008634 dated 20.11.2015. By judgment and order dated 3.2.2016, Second Appeal No.579/2015 was decided in favour of the appellants by this Court (Coram: Sunil P. Deshmukh, J.) and the impugned judgment and decree passed by the first appellate Court was set aside. The first appellate Court was directed to hear the appellants and respondent and decide the appeal on merits. The parties were directed to appear before the first appellate Court on 8.3.2016.

3] It is submitted that after the order passed by this Court, the appellants and respondent appeared before the first appellate Court. Civil Appeal No.76/2016 came to be decided by District Court, Dhule, vide judgment and order dated 7.10.2017 passed in the matter. By the said judgment and order, the judgment and decree passed by the trial Court was set aside and the case was remanded for hearing and disposal according to law. It is submitted that in terms of the order passed by the first appellate Court, the applicants – defendants paid costs of Rs.30,000/-. Subsequently, Special Civil Suit No.66/2014 (old RCS No.304/2013) was decided vide judgment and order dated 10.1.2019 by Second Joint Civil Judge, Senior Division, Dhule and dismissed the suit filed by the respondent – plaintiff. It is submitted that no appeal has been filed against the said judgment and decree.

4] In this background, the learned counsel for the applicants submits that the amount deposited in this Court was deposited in terms of order of this Court as a condition to get circulation in the matter. In view of disposal of appeal and the proceedings before the trial Court, which has ended in dismissal of the suit, the

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applicants are entitled to withdraw the amount deposited in this Court.

5] On the other hand, the respondent who appears in person opposed the application with contention that he is entitled to receive the amount towards illegal occupation and cultivation of the land by the applicants – defendants. He admits that Rs.30,000/- as costs imposed by the first appellate Court are received by him.

6] On due consideration of the submissions advanced, I am of the view that the applicants are entitled to withdraw the amount lying deposited in this Court. In view of disposal of second appeal and dismissal of suit, no proceedings remain pending arising out of the suit subject matter. Apart from this, deposit of the amount was a conditional order to get the matter circulated for admission and hearing. Since the decree passed by the trial Court has been set aside by the first appellate Court and after the remand, the suit has been dismissed, the applicants are entitled to make claim in respect of the decretal amount deposited in terms of decree earlier passed in the matter. If the respondent has any grievance in respect of illegal

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possession and cultivation of the land, the respondent has to file appropriate proceedings seeking damages. The respondent can not claim the amount which is deposited by the applicants in terms of the order passed by this Court. In view of disposal of appeal, the applicants are entitled to receive the amount.

7] Accordingly, the application is allowed in terms of prayer clause (B).

(V.L. ACHLIYA, J.)