

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 529/2018

(RAMRAO NARAYAN PAKHALE & ANOTHER **VERSUS** SHOBHA PRAVIN WANJARI & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.D. Lakhe, counsel for petitioners.
Shri P.A. Dharaskar, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 17, 2019.

The petitioners are aggrieved by the order passed by the trial Court below Exhibit 18 by which the defendant no.1 has been directed to deposit an amount of Rs.1,40,000/- in the Court within a period of fifteen days.

The respondent no.1 is the original plaintiff who has filed suit for partition and separate possession. It is her case that an amount of Rs.2,70,000/- was invested in fixed deposit in her mother's name. The name of the petitioner no.1-Husband was shown as nominee in that deposit. The mother of the original plaintiff expired and hence the petitioner no.1 withdrew the amount of Rs.2,10,000/- from that account. The plaintiff therefore filed an application below Exhibit 18 praying that the amount to the extent of the share of the plaintiff and defendant nos.2, 4 and 5 which was Rs.1,40,000/- be directed to be deposited in the Court. The application was opposed by the petitioners on the ground that the petitioner no.1 had given the aforesaid amount to his wife for investment. The trial Court allowed the application partly and

directed the petitioner no.1 to deposit amount of Rs.1,40,000/- or to give a bank guarantee for the aforesaid amount within a period of fifteen days.

Shri M.D. Lakhey, learned counsel for the petitioners submits that the trial Court was not justified in directing deposit of the amount of Rs.1,40,000/-. It was the case of the petitioners that it was the petitioner no.1 who had given his wife the amount of Rs.2,10,000/- after he received the proceeds from the sale of an agricultural field and therefore he alone was entitled for the aforesaid amount. Without prejudice it was submitted that the direction could have been issued only in respect of share of the plaintiff and not of the other parties. It was thus submitted that the impugned order was liable to be set aside.

Shri P.A. Dharaskar, learned counsel for the respondents supported the impugned order. According to him, the name of the petitioner no.1 was merely shown as nominee and hence he alone was not entitled to the said amount. The plaintiff as well as other defendants in the suit for partition and separate possession were also entitled to share in that amount. He further submitted that the application in question sought to secure the interests of the plaintiff, defendant nos.2, 4 and 5. Hence, the order did not warrant any interference.

Heard the learned counsel and perused the documents on record. It is not in dispute that the amount in question was standing in fixed deposit in the name of the mother of the plaintiff. That amount was withdrawn by he petitioner no.1 in the capacity as nominee. The trial Court has observed that the rights of the parties as regards entitlement to any share in that amount has to be

decided and therefore with a view to secure the suit property, the direction to deposit that amount has been issued. According to the petitioners, the petitioner no.1 had spent the entire amount and hence the direction to deposit is uncalled for. The question with regard to shares of the respective parties would be decided in the suit. The relief of partition having been sought in the suit, the direction to deposit the proportionate shares of the plaintiff as well as the defendant nos.2, 4 and 5 therefore does not call for any interference. In the light of the statement made that the petitioners have spent the entire amount he can be granted time to deposit amount of Rs.1,40,000/- in Court.

Accordingly, the said amount as directed to be deposited by the order passed below Exhibit 18 shall be so deposited within a period of one year from today. It shall be deposited in equal instalments and the entire amount be deposited by the end of July-2020. The proceedings in the suit are expedited.

The Writ Petition is disposed of in aforesaid terms. No costs.

JUDGE

APTE