

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CAS No.851/2019 IN Second Appeal No.490 OF 2011

Nathuji S/o Amrutrao Kamble (deceased) through LR.

Vs.

Manohar s/o Amrutrao Satpudke (deceased) through LR.

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

Court's or Judge's order

.....
Shri Piyush S. Kadam, Advocate for the Appellants.
Shri A.S.Moon, Advocate for the Respondents.

CORAM : MILIND N. JADHAV, J.

DATED : 15/01/2020.

Heard learned counsel appearing for the
respective parties.

2. The Respondents have taken out this application for seeking permission to withdraw sum of Rs.97,500/- which has been deposited by the Appellants. The Appeal has been admitted on 12.12.2014. Thereafter, there is an interim order directing the Appellants to deposit sum of Rs.15,000/- per year with the trial Court during pendency of the Second Appeal. Interim directions regarding injunction have also been passed by the Court.

3. Shri Moon, learned counsel appearing for the Respondents submits that the Appellants are at presently earning profit of Rs.25,000/- per annum; whereas the Respondents are in hardship and penury. He submits

that the deposit of amount, which has been directed by this Court, can be allowed to be withdrawn by the Respondents.

4. Shri Kadam, learned counsel appearing on behalf of the Appellants very fairly submits that the relief, which has been prayed for in the application be granted, in accordance with law. He submits that the Respondents are creating hurdles in the way of the Appellants to cultivate the suit property-field inasmuch as very recently the Respondents have cut off the electricity supply to the suit property-field. He submits that the Appellants had to run from pillar to post to seek restoration of the electricity supply and faced several difficulties because the suit property-field was shown in the name of the Respondents. However, the Appellants have not filed any affidavit-in-reply placing on record the aforesaid difficulties created by the Respondents-Applicants. In rebuttal, Shri A.S.Moon, learned counsel appearing for the Respondents has also been fair and submits that he shall impress upon his clients-Applicants-Respondents that they shall not indulge in such activities. He submits that he shall ensure and persuade his clients to allow the Appellants to cultivate the suit property-field without any hindrance or difficulties. He also submits that the Respondents shall participate in restoration of the electricity supply, if it has not been restored as yet. This stand taken by Shri A.S.Moon,

learned counsel appearing for the Respondents, is appreciated by the Court.

5. In view of the above, by consent of learned counsel appearing for the parties, relief as prayed for in prayer clause (i) can be granted.

6. Accordingly, the Applicants-Respondent nos.1 to 5 are permitted to withdraw the sum of Rs.97,500/- which has been deposited by the Appellants in this Court, after following due procedure in accordance with law.

7. Civil Application is accordingly disposed of.

8. List the Second Appeal for hearing on 30.1.2020.

9. In the meanwhile, paper book, which has been filed by the Appellants, appears to be incomplete as the depositions of some of the witnesses do not seem to be part thereof. The learned counsel for the Respondents agrees to supply the same to the learned counsel for the Appellants and complete the private paper book.

10. List the Second Appeal on 30.1.2020.

JUDGE

Ambulkar