

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

WRIT PETITION NO.7205 OF 2019

Rajendrasingh s/o Krishnarao Vichare

Petitioner

Versus

Manmohansing s/o Karamsing Oberai
deceased through L.R. & others

Respondents

Mr.N.D.Sonawane, advocate for the petitioner
Mr.Amol Gandhi, advocate holding for Mr.Pratap Mandlik, advocate
for Respondent No.1.

CORAM : AVINASH G. GHAROTE, J.

DATE : 28th July, 2021.

PC :

1 Heard Mr.N.D.Sonawane, learned Counsel for the petitioner and Mr.Amol Gandhi, learned Counsel for Respondent No.1. None appears for other respondents though served.

2 It is an admitted position that in a suit for specific performance filed by Respondent no.1 against the present petitioner and Respondents 2 to 5, a decree was passed by the trial Court on 11.08.2016 in SCS No.53 of 2009, challenge to which, in First Appeal No.2578 of 2010, was given up by withdrawing the appeal on 11.08.2016. The consideration of Rs.16,34,661/- came

to be deposited by the original plaintiff/respondent no.1 before the trial Court, which was permitted to be withdrawn by the defendants after the execution and registration of the sale deed. The sale deed was executed on 06.12.2010 and so also possession delivered. Thereafter the petitioner along with Respondents No.4 and 5 filed an application for withdrawal of the consideration, as deposited by the plaintiff/respondent no.1 along with the interest accrued thereupon, as the amount was invested in the Fixed Deposit. This application was registered M.A.N.R.J.I. No.08 of 2017, in which present respondent no.1 had given his no objection. The lower court, however, by judgment dated 13.11.2018, had rejected the application on the ground, that it cannot be decided how much amount the applicant deserves out of the amount deposited by the plaintiff.

3 It is an admitted position that the petitioner and Respondents no.2 to 5 were the joint owners of the suit property and, therefore, would be entitled to 1/5th share each therein, which would translate to 1/5th share in the amount deposited by the plaintiff in the trial Court so also in the interest accrued thereupon.

4 That being the case, the impugned judgment dated 13.11.2018 is hereby quashed and set aside. It is held, that the petitioners as well as the respondents no.2 to 5 each have 1/5th entitlement to the amount deposited by the respondent no.1/plaintiff in the Court as well as in the interest accrued thereupon. The amount to the extent of 1/5th of the above, as on the date of withdrawal, be paid to the petitioner, within one week from the date such an application is made to the *Nazir* of the Court, in which the amount is deposited. It is also made clear that in case any application is made by Respondents no.2 to 5, each of them shall also be entitled to 1/5th of the amount deposited and in the interest accrued thereupon.

5 The petition is accordingly allowed in above terms. No order as to costs.

(AVINASH G. GHAROTE)
JUDGE