

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.149 OF 2020

Shevanti D. Patil & Ors. ... Petitioners.

**Vs.
Babu M. Patil & Ors. Respondents.**

Mr. Anilkumar K. Patil for petitioner.
Mr. Raju D. Suryawanshi for respondent nos. 1 and 2.

CORAM : N.R. BORKAR, J.

DATE : 9th MARCH, 2022.

PC.:

1. This petition takes an exception to the order dated 08.08.2019 passed by Civil Judge, Junior Division, Wada below Exhibit 21 in R.C.S. No.81 of 2018.

2. The petitioners herein are original plaintiff and the respondents herein are the original defendants in abovementioned suit filed for declaration and injunction. According to the petitioners they got the suit properties in oral partition. According to them, during the pendency of the the suit, properties came to be acquired for National Highway and despite their objection the amount of compensation of Rs.3,49,57,813/- came to be disbursed in favour of the respondents. The petitioner had thus filed an application at Exhibit 21 under Order 38 Rule 5 of Civil Procedure Code

inter-alia praying that the respondents be directed to deposit the amount of compensation in the court or in the alternative the said amount be attached. The trial court rejected the said application by the order impugned.

3. I have heard the learned counsel for the petitioner and the learned counsel for the contesting respondent.

4. The learned counsel for the petitioner submits that the trial court ought to have allowed the application to protect the interest of the petitioners. It is submitted that, after decision of the suit in favour of the petitioner, it would be difficult for them to recover the amount of compensation from the respondents. It is, accordingly, submitted that the order impugned thus needs to be set aside and respondents need to be directed to deposit the amount of compensation in the court or in the alternative it be attached.

5. On the other hand, learned counsel for the contesting respondent submits that the petitioners are not at all related to respondents or their common ancestor. It is submitted that there is not even *prima facie* evidence on record in relation to alleged oral partition. It is submitted that the trial court was thus justified in rejecting the application.

6. This Court by order dated 21.1.2021 directed the parties to maintain the status-quo in regard to the amount of compensation if it is not already withdrawn. In view of this, in my view instead of examining the matter on merits, it would be appropriate to direct the trial court to decide the suit expeditiously and continue the interim order. The learned counsel for the

respondents on instructions submits that as on today Rs.10 lakhs are lying in the saving bank account of the respondent no.1 and Rs.52 lakhs are lying in the saving bank account of the respondent no.2. Considering the facts and circumstances, following order is passed.

ORDER

1. Respondent Nos.1 and 2 shall invest the amounts, lying in their Saving Bank Accounts, in F.D.R. in any Nationalized Bank for a period of 5 years.
2. The concerned Bank shall not permit withdrawal of F.D.R. without permission of the trial court.
3. Considering the controversy between the parties, the trial court shall endeavour to decide the suit as early as possible and in any case within a period of 9 months from the date of receipt of copy of this order.
4. The trial court, while deciding the suit, shall pass an appropriate orders in relation to the amount invested in FDRs.
5. Needless to mention that the trial court shall decide the suit on its own merits.
6. The petition is disposed of in above terms.

(N.R. BORKAR, J.)

