

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

CIVIL APPLICATION (CAS) NOS. 488/2021 AND 1088/2022
IN
SECOND APPEAL NO. 175 OF 2017

Sau. Bebybai W/o. Shivaji Kirpan

...VERSUS...

Wasudeo S/o. Anandrao Motghare and ors.

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

Court's or Judge's order

Shri V.M.Gadkari, Advocate for appellant.
Shri M.R.Joharapurkar, Advocate for respondent no. 1/applicant.
Shri R.T.Anthony, Advocate for respondent nos. 2 to 5/applicants.

CORAM : SMT. M. S. JAWALKAR, J.

DATE : 20th DECEMBER, 2022

These applications are filed by respondent no. 1 and respondent nos. 2 to 5 respectively for withdrawal of amount of Rs. 10,00,000/- each.

2. It is brought to the notice of this Court that initially, an amount of Rs. 77,24,794/- was deposited by respondent nos. 6 and 7. Thereafter, the applicants were allowed to withdraw Rs. 20,00,000/- each [i.e. Rs. 20,00,000/- to respondent no. 1 and Rs. 20,00,000/- to respondent nos. 2 to 5 jointly] as per the order passed by this Court on 27/06/2017. Later on, an amount of Rs. 36,45,706/- including interest came to be deposited by respondent nos. 6 and 7.

3. It is submitted by respondent no. 1 that, being an agriculturist, he has entered into an agreement to sell to purchase the property which is placed on record along with the application. In view thereof, they (respondent no. 1 and respondent nos. 2 to 5) are in need of

money. The learned counsel for respondent nos. 2 to 5 submitted that even if the claim of the appellant is presumed to be correct, she would get 1/3rd share in the amount and remaining amount can be disbursed to respondent no. 1 and respondent nos. 2 to 5.

4. Considering this aspect that, the total amount of Rs. 1,13,70,500/- is deposited by respondent nos. 6 and 7, there is no impediment to allow the present applications and to grant permission to withdraw an amount of Rs. 10,00,000/- each [i.e. Rs. 10,00,000/- to respondent no.1 and Rs. 10,00,000/- to respondent nos.2 to 5 jointly]. Accordingly, both the applications are allowed.

5. The respondent no. 1 is permitted to withdraw the amount of Rs. 10,00,000/- and respondent nos. 2 to 5 jointly are permitted to withdraw the amount of Rs. 10,00,000/- from the amount deposited by respondent nos. 6 and 7.

6. Nazir to release the amount as per direction.

7. Accordingly, both the applications stand disposed of.

CIVIL APPLICATION (CAS) NO. 1329 OF 2022

The present application is filed by the appellant for grant of permission to withdraw the amount of Rs. 25,00,000/-.

2. It is contended that the appellant is entitled for 1/3rd share and she may be permitted to withdrawal the amount of Rs. 25,00,000/-.

3. The application is orally opposed by respondent no. 1 as well as respondent nos. 2 to 5 and submitted that the suit filed by the appellant is dismissed. In view thereof, her rights are yet to be

crystallized. As such, no permission should be granted to the appellant to withdraw any amount.

4. However, for the reasons stated in the application, permission to withdraw an amount of Rs. 5,00,000/-, in view of the additional amount deposited by respondent nos. 6 and 7, is granted, subject to furnishing the solvent surety to the satisfaction of the Trial Court.

5. Nazir to release the amount as per direction.

6. Accordingly, the application stands disposed of.

CIVIL APPLICATION (CAS) NO. 641 OF 2022

The present application is filed for grant of temporary injunction in respect of the properties as mentioned in the application, restraining respondent nos. 1 to 5 from creating any third party interest in the suit properties.

2. Respondent no. 1 and respondent nos. 2 to 5 undertake that they will maintain status quo as on today in respect of the properties as mentioned in the application, till decision of appeal. In view thereof, no independent order is required.

3. Accordingly, the application stands disposed of.

SECOND APPEAL NO. 175 OF 2017

Considering the fact that the matter is more than 5 years old and the request of parties, list the matter for final hearing, in the week commencing from 16/01/2023.

(Smt. M.S. Jawalkar, J.)