

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

42 WRIT PETITION NO.1471 OF 2023
WITH
CA/3732/2023 IN WP/1471/2023

BINARANI KEDARSING PARDESHI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS EXECUTIVE
ENGINEER AND OTHERS

...
Advocate for Petitioners : Ms. N B Kamble
AGP for Respondents: Mr. S B Pulkundwar

...
CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: March 20, 2023

...

PER COURT :-

1. The petitioners claim to be co-owners of land gat no.55/1 and 55/2 at Mouje Isarwadi, Tq. Paithan, District Aurangabad in relation to which the suit for partition at the behest of the petitioners/plaintiffs is pending adjudication.

2. By way of the instant petition, petitioners have sought issuance of directions to respondent nos.1 and 2 to deposit the rental compensation in the trial court in the aforesaid pending suit, as according to the petitioners, the land in question is in possession of the respondent-State and the issue is already subjudiced before the Apex Court.

aaa/-

3. Learned AGP Mr. Pulkundwar would oppose the prayers, as according to him, the relief which is sought in the petition can also be claimed in the pending suit.

4. We have appreciated the said submissions.

5. It is an admitted position on record that the suit filed at the behest of the petitioners/plaintiffs seeking half share in the suit property is pending adjudication since 2016 before the trial court. The rental compensation of which the petitioners have sought directions of depositing are also in relation to the very same property and the claim of the petitioners that the petitioners are co-owners is looked into and appreciated in the pending suit.

6. As such, we are of the view that the relief which is claimed in the petition can very well be claimed by the petitioners/plaintiffs in the pending suit and writ jurisdiction cannot be permitted to be invoked in such an issue.

7. As such we dispose of the writ petition so also the application for amendment.

aaa/-

8. We grant liberty to the petitioners to approach before the Court below seeking extensive amendment to the suit; which be considered and decided without being influenced by disposal of the present petition.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

...