



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

920 CIVIL APPLICATION NO. 8709 OF 2024
IN SECOND APPEAL NO. 435 OF 2007

BHIMA SHANKAR ABHALE (DIED) THROUGH L.RS. LATABAI
MADHUKAR RAUT

VERSUS

RAMDAS KARBHARI JADHAV (DIED) THROUGH L.RS. SHANTABAI
RAMDAS JADHAV AND OTHERS

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Mr. P.B. Shirsath – Advocate for Applicant

Mr. N.R. Bhavar – Advocate for Respondents (appellants in S.A.)

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 21st August, 2024

PER COURT :

1. Heard rival submissions.
2. The applicant is seeking withdrawal of amount of mesne profits which is being deposited in the learned Trial Court vide order of this Court dated 5th April, 2010. It appears that, the amount of Rs.40,000/- which was deposited at the relevant time was already allowed to be withdrawn by the present applicant under order of this Court, dated 11th March, 2011.
3. This Court had directed the respondents to deposit the amount of mesne profits at the rate of Rs. 40,000/- p.a. and the respondents

are depositing the said amount by the end of month of May every year. Further, as per the report dated 30.04.2024 of Assistant Superintendent of the learned Trial Court the amount of Rs.5,60,000/- appears to be deposited till 24.05.2023.

4. The applicant had filed an application for withdrawal of remaining amount before the learned Trial Court, but since the amount was being deposited under order of this Court, the learned Trial Court allowed withdrawal of amount of Rs. 40,000/- only as directed by this Court under order dated 11th March, 2011.

5. The learned Counsel for the respondents strongly opposed the application on the ground the main appeal can be heard instead of granting withdrawal. However, when this Court had already permitted the applicant to withdraw the amount of Rs.40,000/-, which was paid at the relevant time by furnishing solvent security then the remaining amount of mesne profits deposited with the learned Trial Court till now can also be allowed to be withdrawn on the same condition.

6. As such, the application stands allowed and the applicant is permitted to withdraw the entire balance amount of mesne profits as deposited with the learned Trial Court by furnishing solvent security

to the satisfaction of the learned Trial Court alongwith usual undertaking.

7. The application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE