



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 CIVIL APPLICATION NO. 6588 OF 2025

IN SA/26/2025

LATABAI W/O JAGDISHPRASAD VYAS AND ORS

VERSUS

SANTOSHKUMAR DWARKAPRASAD PANDIT AND ORS

WITH SECOND APPEAL NO. 26 OF 2025

WITH CIVIL APPLICATION NO. 718 OF 2025

IN SA/26/2025

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Advocate for Applicant : Mr. Vitthal Haribhau Dighe.

Advocate for Appellant in SA : Mr. Sanjay D. Hiwrekar.

Advocate for respective Respondents : Mr. H. D. Deshmukh.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 03.07.2025

PER COURT :-

1. Heard respective learned counsels for the parties.
2. Civil Application No.6588 of 2025 is for disbursement of amount of Rs.2,00,000/- deposited before the Lower Appellate Court.
3. Learned counsel for the applicant submits that by way of interim arrangement during the pendency of appeal and more specifically while considering application under Section 41 Rule 5 of the CPC, condition was imposed which was subsequently modified by indulgence of this Court vide order dated 29.11.2023 in Writ Petition No.9456 of 2021.

Respondents deposited Rs.2,00,000/- in Lower Appellate Court in pursuance of the order referred above. Applicant is in need of money. She is seeking permission to withdraw the amount.

4. Learned counsel Mr. Hiwrekar would oppose the submissions and contents of application. It is contended that amount was directed to be deposited towards security only. Applicant cannot be said to be entitled to the amount deposited in this Court. It is submitted that second appeal is pending for admission and founded on substantial questions of law. He would further submit that claim of mesne profit cannot be decided at this juncture and that too by applicant.

5. Applicant is the original plaintiff who had filed suit for partition and possession in respect of 14 Hectar and 11 R. of land comprising in Gut No.178. Respondent Nos.1 to 3 are in possession of the suit land. Both the Courts below decreed the suit partly granting share to the applicant. The amount deposited by the respondent in the Lower Appellate Court was in the nature of security in pursuance of order below Exh.5. In the absence of any speaking order, the Lower Appellate Court did not grant disbursement of the amount. Considering the fact that respondent Nos.1 to 3 are in possession of the

agricultural land, I deem it appropriate to permit the applicant to receive Rs.1,00,000/- at this juncture.

6. Civil application is allowed partly permitting the applicant to receive Rs.1,00,000/- on furnishing undertaking to the Lower Appellate Court as well as this Court that in case, applicant is called upon to refund the amount, the same would be refunded within four (4) weeks along with interest of 4% per annum.

In Second Appeal

7. Learned counsel for the appellants seek leave to correct name of respondent No.6.

8. Leave is granted as prayed.

9. List the second appeal for urgent admission on 28.07.2025.

10. Interim relief granted earlier, if any to continue till next date.

(SHAILESH P. BRAHME, J.)

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vmk/-