

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

**CIVIL APPLICATION NO.2306 OF 2015
IN
FIRST APPEAL NO.749 OF 2015**

Smt. Girijabai w/o Bhagwat Chormule & ors. : Applicants.
Versus
Mrs. Sakhubai @ Shakuntala Vithoba Chopde
by her Power of Attorney Holder
Ganesh Vithoba Chopde and ors. : Respondents.

Ms. Shruti Tulpule i/by Mr. P M Tilak for the Applicants.
Mr. S D Thokade for the Respondent No.1.
Mrs. Poonam Bhosale, AGP for the Respondent Nos. 3 and 4.
Mrs. S I Shah a/w Mr. Dushyant Kumar i/by S I Shah & Co. for the
Respondent No.5.

CORAM : R. M. SAVANT, J.
DATE : 09th June 2016

P.C.

1 The above Civil Application has been filed seeking interim stay to the judgment and order dated 24/03/2015 passed by the Reference Court in L.A.R. No.4 of 2012. It is an admitted position that the Applicants/Appellants have deposited 50% of compensation awarded by the Special Land Acquisition Officer under the Award passed by him in the Reference Court whilst the Reference was under consideration. By the impugned judgment and order the Reference Court has held the Respondent No.1 to be entitled to half share in the compensation.

2 The claim of the Respondent No.1 is sought to be opposed to on

behalf of the Appellants by relying upon the judgment of the Apex Court reported in (2016) 2 SCC 36 in the matter of Prakash & ors. v/s. Phulavti & ors. It is sought to be contended that since the father of the Respondent No.1 i.e. the original land owner had expired much prior to the amendment to Section 6 of the Hindu Succession Act, the Respondent No.1 would not be entitled to the share as a co-parcener. It is however contended that the entitlement of the Respondent No.1 if any would be in the share of the father i.e. 50% share but that would be contingent upon the fate of the First Appeal filed by the Applicants/Appellants against the decree passed in the partition suit filed by the Respondent No.1.

3 Since 50% of compensation awarded by the Special Land Acquisition Officer has already been deposited by the Applicants/Appellants in the Reference Court, the above Civil Application would have to be allowed and is accordingly allowed in terms of prayer clause (a). Needless to state that it would be open for the Respondent No.1 to file an application for withdrawal of the amount, which application would be considered on its own merits and in accordance with law. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]