

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

908 CIVIL APPLICATION NO.14731 OF 2018
IN FA/2185/2016

FULCHAND RANGALAL LOYA (DIED)
THROUGH LRS SURAJ FULCHAND LOYA
VERSUS
THE M.I.D.C. THR ITS REGIONAL OFFICER, LATUR AND OTHERS

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Advocate for Applicants : Mr. A. H. Mandhani.
Advocate for Respondent No.1 : Mr. S. S. Dande.
AGP for Respondent No.2: Mr. P. N. Kutti.
Advocate for Respondent No.4-B : Mr. V. B. Jadhav.
Advocate for Respondent Nos.4-A, 4-C & 4-D : Mr. V. G. Kodale.

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WITH

CIVIL APPLICATION NO.2339 OF 2019
IN FA/2185/2016

KAMALBAI W/O FULCHAND LOYA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicants : Mr. Suraj V. Gundre.
AGP for Respondent No.1: Mr. P. N. Kutti.
Advocate for Respondent No.2 : Mr. S. S. Dande.
Advocate for Respondent No.3 : Mr. A. H. Mandhani.
Advocate for Respondent Nos.4, 6 & 7: Mr. V. G. Kodale.
Advocate for Respondent No.5 : Mr. V. B. Jadhav.

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CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 06th February, 2019.

P.C.:

. Mr. V. G. Kodale, learned counsel and Mr. V. B. Jadhav, learned
counsel are expected to file *Vakalatnama*.

2 The applications are filed by three sons of deceased Fulchand and widow of deceased Fulchand for permission to withdraw 50% amount of compensation, which is lying in this Court. This Court has already allowed them to withdraw 50% of the amount and as this Court had not allowed them to withdraw 50% amount, one son of Fulchand had approached the Honourable Supreme Court by filing Special Leave Petition (Civil) Diary No.22195 of 2018. In that petition, the Apex Court has granted him permission to withdraw 100% amount of compensation and in respect of 50% of the amount he is expected to give security to the satisfaction of the Reference Court. It appears that the special leave petition was filed only by one son, Surajmal and it was not filed by other two sons of Fulchand and also by widow of Fulchand.

3 The submissions made for four daughters of Fulchand show that they are claiming their share in the property. The learned counsel representing Surajmal produced on record a document titled as *Hakkasodpatra* written on general stamp of Rs.100/- denomination and shown to be executed before the Notary Public on 16th January, 2001. The decision was given by the Reference Court on 16th March,

2015 and Fulchand died in the year 1999. A copy of notarized document is taken on record and it shows that the sisters had mentioned that in the marriage the share in the property was given to them and as the sons had undertaken the responsibility to maintain the widow, mother they were giving up their right in all the lands. It appears that in Civil Suit No.717 of 1999, which is mentioned in the notarized document, the sisters were not made party defendants and it was filed by one brother against the other brothers. In the notarized document, it was mentioned that there was a partition decree in the suit and due to partition the land had gone to the share of Surajmal.

4 Firstly, the relinquishment in the property cannot be made by execution of such document. It is not registered and it has also no reference of entitlement of the daughters to get share in the compensation amount. There is no whisper about compensation amount, which the sisters were entitled to get in this disputed document. If this document is ignored then in that case even if it is presumed that the property acquired was ancestral property of Fulchand, in that case also after the death of Fulchand his property will have to be divided amongst his successors, who include his four daughters. Thus, apparently, the four daughters are entitled to get

share in the compensation amount, which is lying in this Court.

5 The learned counsel representing Surajmal submitted that those sisters were made party Respondents in the matter, but the learned counsels representing the sisters submit that no notice of said proceeding was received by them. There is a possibility that the aforesaid circumstances were not brought to the notice of the Supreme Court for getting entire amount of compensation by Surajmal. In view of this possibility and for protecting the interest of the daughters of Fulchand, this Court holds that it is necessary for Surajmal to approach the Supreme Court again and get the order of the nature showing that even when there are sisters, the amount is to be paid only to him. Both the applications are disposed of in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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