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41-CA-5581-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

41 CIVIL APPLICATION NO. 5581 OF 2023
IN FA/3661/2023

Bhivaji Bapurao Kendre (died) Thr Lrs. Premala Bhivaji Kendre And Anr
VERSUS
Baburao Bhivaji Kendre And Ors

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Mr. Gajanan K. Sontakke, Advocate for Applicants.

Mr. Ajinkya S. Deshpande h/f Mr. A. S. Deshpande, Advocate for the
Respondent Nos. 1 to 3.

Smt. Chaitali Chaudhari-Kutti, AGP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 29th SEPTEMBER 2025.

PC :-

1. Heard the learned Advocates for the parties.
2. This application is filed for withdrawal of the amount of compensation deposited by the appellants in the office of this Court.
3. The learned Advocate for the applicants submits that there was a suit filed between the parties bearing RCS No.94/2007 by the present applicant Sambhaji Kendre (2/B), wherein Bhivaji Kendre i.e. father of

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present applicant No.2/B was the Defendant No.1. Present applicant No.1/A Premilabai Kendre was Defendant No.2 whereas the present respondent No.1 and 2 were Defendant No.3 and 4. One sister of them was Defendant No.5 in the said suit.

4. In the said Suit, a compromise took place between the parties. During the pendency of the Land Acquisition Reference, it was decided that the defendant Nos. 2 and 3 would be entitled to get the amount of compensation alongwith the land admeasuring 62R. The defendant Nos. 1 and 2 were entitled to get 50-50 % share in the compensation. He thus submits that the respondents have already taken their share in view of other clauses of the said compromise, and therefore, the respondent Nos.1 and 2 will not be entitled to receive any share in the compensation and it is only Premilabai Kendre and Sambhaji Kendre who would get the amount. He thus prays for permission to withdraw the amount by applicants only.

5. Learned Advocate for Respondent Nos. 1 and 2 have filed affidavit

in reply. It is their case that after death of Bhivaji, each of the heirs will be entitled to get the share in the compensation amount to the extent of deceased Bhivaji Kendre and applicants alone would not be entitled to get the amount.

6. This Court has gone through the compromise decree. From the compromise it is clear that the Defendant Nos. 1 and 2 therein i.e. deceased Bhivaji Kendre and Premla Kendre would be entitled to get the amount of compensation in LAR No. 456/2000. Now it is position that Bhivaji Kendre died. The argument of learned Advocate for applicants therefore cannot be accepted that in the share of father, he would be only entitled to receive compensation as the other Respondents in the Suit have already received their share. There is no doubt about the factual position. It is an admitted position that respondent No.3 Laxmibai Lahane died. The sister of applicant No.2/B and Respondent Nos. 1 and 2 had already relinquished her share in the property, and thus she will not be entitled to give share in the compensation. This Court does not find any substance in this argument. This argument is

acceptable only to the extent of Premilabai Kendre as she has already received 50% of the compensation in LAR No. 456/2000. In the compromise, she has given up all her claims. It is clear that after death of father Bhivaji, the applicant 2/B and present respondent No.1 and 2 be entitled to receive 1/3 share each in the amount of compensation to be share of deceased Bhivaji Kendre. Hence, the following order:

ORDER

- (i) Application is partly allowed.
- (ii) Applicant No.2/B Sambhaji Bhivaji Kendre, respondent No.1 Baburao Bhivaji Kendre and Respondent No.2 Baliram Bhivaji Kendre are entitled to receive 1/3 share each from the compensation amount from the share of deceased Bhivaji Kendre.
- (iii) They are permitted to withdraw 50% of the amount on furnishing usual undertaking, and 25% amount be withdrawan on furnishing solvent surety/security to the satisfaction of the learned Registrar (Judicial) of this Court.

- (iii) Remaining 25% amount be deposited be kept in fixed deposit in any nationalized bank till disposal of the appeal.
- (iv) With this application stands disposed off.

[KISHORE C. SANT, J.]