

ORDERS ON IANO.III

This Appeal is filed by the Appellant/Claimant against the Judgment and Award dated 25/05/2010 passed by the Hon'ble IV Addl Civil Judge (Sr.Dn) at Mysuru in LAC.No.78/2002 seeking to modify the Award and to fix the market value of the land at Rs.16,99,400/- per acre.

2. The Appellant/Claimant has also filed the application under Order XLI Rule 27 CPC seeking permission to produce the documents as additional evidence in this appeal.

3. In the Affidavit accompanying Application the Appellant has stated that the averments made in the memorandum of Appeal be considered as the Affidavit in support of this Application. In the Memorandum of Appeal it is stated that the land of the Claimant is situated at Nadanahalli village and it is acquired for the purpose of formation of residential layout and the date of Notification is 30/01/1997. The land of the claimant in LAC.No.78/2002 and acquired land in LAC.No.79/2002 were also situated in the same village and both the cases were disposed of by a common judgment. The Appeal preferred against the judgment and award in LAC.No.79/2002 in LAC.Appeal.No.189/2013 before the Hon'ble V Addl District Judge, was allowed and the matter was remanded and after remand the said case was disposed of fixing the market value of the land at the rate of Rs.16,99,400/-. Therefore,

the Appellant is entitled for the market value at Rs.16,99,400/- for his land. The Claimant has produced the copy of the Judgment and Award dated 24/03/2018 LAC.No.79/2002 passed by the Hon'ble IV Addl Senior Civil Judge, Mysuru. It is seen that earlier both the cases were disposed of by common judgment and in this appeal the earlier judgment is under challenge. As the judgment also relates to the land situated in the same village, the documents are essential for the purpose of deciding the Appeal. Therefore, the Appellant has prayed to allow the application.

4. The Respondent has filed any objections to the above application.

5. Perused the application, objections, case records and heard both the sides on the above application and also on the main appeal as the application under Order XLI Rule 27 CPC has to be considered along with the main appeal.

6. Now the points that arise for the consideration of this Court are:

1. Whether the documents produced by the Defendant along with IA.No.III under Order 41 Rule 27 of C.P.C can be received as additional evidence?
2. Whether the fixing of the market value of the land at Rs.16,99,400/- per acre is contrary to the facts and circumstances of the case and the evidence on record and against the

principles of law and calls for interference by this Court?

3. What order?

17. The findings on the above points are as follows.

Point No.1: In the Affirmative

Point No.2: Would be answered after

considering the additional evidence

Point No.3: As per final order

for the following:

REASONS

POINT No.1 :

8. The Appellant wants to produce the Judgment in LAC.No.79/2002. It is seen that earlier both the cases were disposed of by common judgment and in this appeal the earlier judgment is under challenge. This document is relevant as the same relate to the property, which is situated in the same village as of this case. It is seen that the said judgment is passed after passing of impugned Judgment. Therefore, the Appellant could not have produce the same. Hence, the Appellant has made out the grounds to receive the said document.

9. The documents are material for the purpose of decision of this case. The above documents can be received by this Court as additional evidence as per the provisions of Order XLI Rule 28 of CPC and there is no necessity to remand the matter. Hence, this Court holds that the

documents produced by the Appellant can be received as additional evidence. Hence this point is answered in the Affirmative.

POINT NO.2:

10. The finding on this point can be given only after the recording of the additional evidence. Hence, this point is answered as above.

POINT NO.3:

11. In the result, this court proceeds to pass the following order:-

ORDER

The IA.No.III filed by the Appellant under Order XLI Rule 27 of CPC is allowed with no order as to costs.

The Appellant is permitted to produce the documents filed along with IA.No.III as additional evidence.

The additional evidence will be recorded by this Court as per Order XLI Rule 28 of CPC.

III Addl. District & Sessions Judge,
Mysuru

For further evidence of the
Petitioner by 27/09/2021.

III AD & SJ, Mysuru.