

KAUK210002142023



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.
ANKOLA**

PRESENT

Smt. Arpitha B Bellad.

B.Com., LL.B.,
Addl. Civil Judge and J.M.F.C.,
Ankola.

FDP NO.5/2023

Dated this the 4th day of January 2025

Petitioner:- Ashok Ramachandra Naik,
Age:65 years, O/c: Agriculturist,
R/o Alageri, Tq. Ankola.

[By Sri. A.N.T., Advocate]

V/s

Respondant:- Smt. Shaila W/o Devidas Naik,
Age:72 Years, Occ: Agriculturist,
R/o Alageri, Tq. Ankola.

[By Sri. M.P.B., Advocate]

ORDERS ON IA NO. III FILED BY THE PETITIONER
UNDER ORDER XXXIX RULE 1 and 2 OF CODE OF CIVIL
PROCEDURE, 1908

1. Petitioner has filed IA-I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 restraining the defendant from claiming or receiving half share in the compensation amount of sum of Rs.1,41,970/- awarded in respect of suit land bearing Sy.No.380/1 to an extent of 0-1-0 out of 0-13-0.

2. The said application is accompanied with an affidavit of the petitioner wherein it is stated that this Court has passed preliminary decree in O.S.No.32/2020 by declaring that he is entitled for $\frac{1}{2}$ share in the suit schedule properties. Now, an area of 0-1-0 out of 0-13-0 in the property bearing Sy.No.380/1 of Alageri Village which is Sl.No.2 of the suit property is acquired by the Government for Alageri Airport Project and Land Acquisition Authority has issued an award notice to the respondent, since her name is mentioned in the concerned revenue records and award is also passed in the name of the respondent. Now the respondent in order to gulpdwn the entire compensation amount made a representation to the acquiring authority and if an entire compensation is paid to the respondent, the petitioner

will be put into hardship, loss and inconvenience and he has made out a prima facie case and balance of convenience lies in his favour. On all these grounds, prays to allow the said application.

3. No objections came to be filed on behalf of the respondent.

4. Heard respective counsels for the petitioner and respondent and perused entire materials on record.

5. Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:

1. Whether the Petitioner has established prima facie case?

2. Whether balance of convenience tilts in favour of petitioner?

3. Whether irreparable loss or injury will be caused to the petitioner, if the injunction is not granted?

4. What order?

6. My answers to the above points are as under:

Point NO.1: In the Affirmative.

Point NO.2: In the Affirmative.

Point NO.3: In the Affirmative..

Point NO.4: As per the final order, for the following:

R E A S O N S

7. POINT NO.1 to 3: This is the final decree proceedings initiated by the petitioner against the respondent in order to give effect to the preliminary decree passed in O.S.NO. 32/2020. On perusal of the Judgment and decree passed in O.S.No.32/2020, it is clear that this Court has passed an order that the plaintiff/petitioner and respondent/defendant are entitled for $\frac{1}{2}$ share each in the suit schedule properties. The suit schedule properties are the properties bearing Sy.No.57 measuring 00-07-00 and Sy.No.380/1 measuring 00-13-00 of Alageri village of Ankola Taluk.

8. Now the grievance of the petitioner is that 1 gunta of land out of 30 guntas in Sy.No.380/1 which is the Sl.No.2 of the suit property has been acquired for the project of Alageri Airport and also award notice was issued to the respondent and since the name of the respondent is appearing in revenue records, she has made a representation to the acquiring authority in order to claim the entire compensation amount of Rs.1,41/970/- in which the petitioner is also entitled for his half share. Hence, he is constrained to move the present

application seeking temporary injunction against the respondent restraining her from claiming entire compensation amount in respect of 1 gunta of land in Sy.No.380/1.

9. The respondent has not refused the contention made by the petitioner by filing any objections, as such the entire averments made in the said application totally remained unchallenged. If at all if there was any reasonable defence of the respondent certainly she would have appeared and filed the objections. In the absence of any objections inevitably this Court shall believe the contention of the petitioner. There appears absolutely no dispute in respect of acquisition of 1 gunta of land out of 13 guntas in Sy.No.380/1.

10. In addition to this, the petitioner has also produced the award notice issued to the respondent by the Land Acquisition Officer and on perusal of the same, it clearly goes to show that 1 gunta of land out of 13 guntas in Sy.No.380/1 has been acquired and the compensation amount awarded is sum of Rs.1,41,970/-. As already observed, the petitioner is also entitled for half share in the suit properties as per the Judgment and decree passed in O.S.No.30/2020, as such when subsequently, the land to an extent of 1 gunta in Sl.No.2 of the suit property is acquired by the Government for the project of Airport, then the petitioner is entitled for his half share in the compensation amount also. Under such

circumstances, if the respondent is not restrained from claiming entire compensation amount, then the petitioner will be put into loss and it will be difficult for him to recover his half share in the amount which may amount to multiplicity of proceedings. Also. the said aspects averred in the present application are not at all disputed by the respondent by filing necessary objections and while addressing the arguments, the counsel for the respondent consented to give necessary direction to deposit the compensation amount to an extent of half share of the petitioner. Hence, there is no impediment for this Court to allow the said application. Therefore, in the absence of any possible defences from the respondent, I do not find reasons to disbelieve the contention of the petitioner, as such I hold that the petitioner has made out the prima facie case, the balance of convenience lies in his favour and as observed above, the plaintiff will be put to irreparable loss or hardship if TI is not granted. Hence considering over all circumstances of the case, Points No.1 to 3 are answered in the **Affirmative**.

11. Point NO.4: For the foregoing reasons, **this Court proceeds to pass the following:**

ORDER

**Interim Application No. III filed
by the Petitioner U/O XXXIX Rules 1**

**and 2 of the Code of Civil Procedure,
1908 is hereby allowed.**

**The Respondent is hereby
restrained from claiming/receiving
half share of the petitioner in the
compensation amount of
Rs.1,41,970/- awarded in respect of
land acquisition pertaining to
Sy.No.380/1 to an extent of 0-1-0
out of 0-13-0.**

(Typed and prepared by myself directly on computer, then corrected by me
and then pronounced in the open court on this the 4th day of January-
2025)

**(Arpitha B Bellad)
Addl. Civil Judge and J.M.F.C.,
Ankola.**

**(Order Pronounced by in the open
court vide separate order)**

ORDER

**Interim Application No. III filed
by the Petitioner U/O XXXIX Rules 1
and 2 of the Code of Civil Procedure,
1908 is hereby allowed.**

**The Respondent is hereby
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out of 0-13-0.**

Call on 18-01-2025.

**Addl. Civil Judge and J.M.F.C.,
Ankola.**

