

ORDERS ON I.A.NO.IV

This order arises out of an application filed under Order VI Rule 17 R/w section 151 of CPC seeking to amend an extent of land to 00-12-00 instead of 0-13-00 in Sy.No.380/1 of Algeri village in Sl.No.2 of the suit schedule properties.

2. An affidavit is accompanied with the said application wherein it is stated that the land to an extent of 00-01-00 in Sy.No.380/1 of Sl.No.2 of the suit schedule property is acquired for Alageri Airport project and an award is passed in this regard and the possession of the acquired land is obtained by the authority. Hence, it is necessary to amend an extent of land in Sl.No.2 of the suit schedule property and the said amendment neither changes the nature of the case nor goes to the root of the case. No prejudice would be caused to other side if the said application is allowed. Hence, prays to allow the said application.

3. The counsel for the respondent orally objected for the said application and further submits that the petitioner ought to have taken steps in preliminary decree passed in O.S.NO. 32/22020.

4. Perused the entire materials on record.

5. Admittedly, the present petition is initiated by the petitioner for final decree in order to give effect to the

preliminary decree passed in O.S.NO.32/2020 wherein this Court has passed an order declaring 1/2 share each in suit schedule properties to the plaintiff and the defendant and Sl.No.2 of the suit property in the land bearing Sy.No.380/1 measuring 00-13-00 situated at Alageri village. Now the petitioner intends to amend the petition in respect of extent of land to 12 guntas instead of 13 guntas in view of the acquisition of the land to an extent of 1 guntas for the project of Alageri Airport.

6. It is an undisputed fact that the land to an extent of 1 gunta is acquired for the Alageri Airport Project in Sl.No.2 of the said property and in this regard, award has also been passed by Land Acquisition Officer and the said land of 1 gunta in the said property went into the possession of the Land Acquisition Authority in which the petitioner and respondent have lost right, title or interest and the compensation amount is also awarded and the remaining area left is to an extent of 12 guntas. Admittedly, the said land was not acquired during the pendency of the original suit, as such this Court declared 1/2 share in the land acquired also but the parties are not entitled for the same in an area of 1 gunta acquired for the project. Under such circumstances, it is essential to amend the petition in respect of extent of land of 00-12-00 instead of 00-13-00 in Sy.No.380/1 of the suit property as sought for in the application, otherwise it will be hurdle while drawing up of the final decree. The counsel for the respondent submitted that the

petitioner ought to have taken steps in preliminary decree but however, this Court suo moto by taking into consideration of undisputed facts and changed circumstances pertaining to acquisition of land of 1 gunta for the project of Algeri Airport in Sy.No.380/1, can pass an order for modifying the extent of land in Sl.No.2 of the suit schedule property. If the preliminary decree is remained unchanged, it will certainly cause hurdle in executing and drawing up of final decree. Hence, the said application filed by the petitioner deserves to be allowed. With these observations, **this Court proceeds to pass the following-**

ORDER

The Application filed by the petitioner U/O VI Rule 17 R/W Section 151 of CPC is hereby allowed.

Consequently, the petitioner is hereby directed to carry out the necessary amendment and to furnish amended petition.

Accordingly, office is hereby directed to draw a supplementary preliminary decree by modifying the extent of land in Sy.No.380/1 to an extent of 00-12-00 instead of 00-13-00 of Alageri Village.

Sd/-

Addl. Civil Judge, Ankola.