

KAMS020021302013



**IN THE COURT OF THE V ADDL. SENIOR CIVIL
JUDGE & JMFC AT MYSURU**

:PRESENT:

Sri A.C. Dayananda Murthy B.A. LL.M.,
V Addl. Senior Civil Judge & JMFC, Mysuru

Dated this the 03rd Day of November 2023

Ex. No.494/2013

BETWEEN

- Decree Holders :**
1. Srinivasa Kantharaje Urs,
Major,
S/o V.Subramanya Raje
Urs,
 2. Uma Srinivasa,
D/o D.V.Subramanaya
Raje Urs,
 3. Ramadevi,
Aged about 40 years,
D/o D.V.Subramanaya
Raje Urs,
 4. Suma,

Aged about 38 years,
D/o D.V.Subramanaya
Raje Urs,

All are legal
representatives of late
V.S.Choodamani,
D/o T.B.Ramaraje Urs,

Now residing at Door
No.897/1, Kantharaje Urs
Road, Lakshmipuram,
Mysore.

(By Sri.P.K.P - Adv)

AND

- Judgment Debtor :**
1. The Assistant
Commissioner,
Mysore Sub Division,
Mysore.
 2. The Divisional Engineer,
PST and Telegraph,
Mysore Division,
Mysore.

(By Sri.V.A.R - Adv)

PARTIES ON I.A.No.6

Applicant	/	Sri.M.Pranav Kumar,
Additional D.Hr:		S/o Sri.Late M.R.Mahesh,
		Aged about 34 years,
		R/at D.No.889,
		"Sri.Rachappaji Krupa",

1st Main Road,
Lakshmipuram,
Mysuru – 570 004.

AND

**Opponents/
Decree Holders:**

Sri.Srinivasa Kantharaje
Urs and others

ORDERS ON I.A. No.6

1. The applicant has filed I.A. No.6 under order 1 rule 10(2) of C.P.C. praying to implead him as additional decree holder in the petition in the interest of justice and equity.

2. The Applicant sworn the affidavit stating that this is a reference under Sec.18 of the Land Acquisition Act for enhancement of compensation. The property acquired was a house property bearing D. No.896, situated at Kantharaj Urs Main Road, Mysuru, which originally belonged to Smt.M.G. Chaluvajammanni. The said M.G.Chaluvajammanni died leaving behind two daughters namely T. R. Veerarajemmanni and V.S. Chudamani both deceased. The applicant is the grandson of T.R. Veerarajammanni and great grandson of late M.G. Chaluvajammanni. Upon the death of applicant's greatgrandmother M.G. Chaluvajammanni

the house property devolved equally on her two daughter, namely T. R. Veerarajemmani i.e. applicant's grandmother and V.S. Chudamani. Upon the intestate death of applicant's grandmother, her undivided half share in the aforesaid house property will equally devolve on all the children of T.R. veerarajammanni. As such the applicant is also entitled for a share in the compensation amount awarded in this case.

3. It is further sworn that the decree holders have withdrawn certain amount of compensation without the applicant notice. It is likely that further amount that may be deposited will also be withdrawn without his notice. In the circumstances and he is an heir apparent, he is entitled to come on records and stake his claim. The applicant's father along with other heir have already filed a suit in O.S No.300/2015 on the file of this court. Hence, it is just and necessary to implead him as additional decree holder. Hence prays to allow the application.

4. On the other hand the learned counsel for the D.hrs have filed objection to the present application contending that the present application is not

maintainable in law or on facts. The applicant has misconceived the provision of Order 1 Rule 10 (2). This is a proceedings under Land Acquisition 1894 is a self contained Code. It is not only the mode and manner in which an application for reference by a person dissatisfied therewith is to be made. Here the applicant failed to implead himself in the proceedings. The application filed by the father of the applicant was rejected by the Civil Court in L.A.C. No.647/1998 and C.R.P.No.809/2002 for reference to Civil Court for enhancement of compensation. The applicant slept over his right and not challenged the order of this court. As such he is not entitled to implead him as additional claimant in this proceeding.

5. It is further contended that, the present Decree Holder who challenged the order in the Civil Revision before Hon'ble High Court and got the proceedings remanded for fresh enquiry. The present applicant had not participated in the said proceedings. As such the applicant is not the party in the proceedings under Sec.18(3)(b) of the Act. The applicant is also not a party in this proceeding which is a disposed off matter with regards to enhancement of compensation. As such the applicant has no right to

implead him as additional claimant in the petition. Further, the applicant has suppressed the real facts and his participation in that reference proceeding and he is not the party to subsequent proceedings. As such he is not entitled to implead as additional Decree Holder in the petition at this stage of proceeding. The applicant has lost his right for enhancement of compensation. The D.Hr will only have the right over the enhanced compensation. The Hon'ble High Court of Karnataka had passed an order on 10.01.2013 in W.P.No.27925/2012 (LA.Res) wherein Hon'ble Justice Mr.Anand Byrareddy held that when the applicant is not a party in the for higher compensation, then subsequently he cannot file an application for impleadment in the said proceedings after final disposal of the case. Hence prays to reject the application.

6. Heard the arguments by the both side counsels and I.A and materials placed on record.

7. The point that arises for consideration is as follows:

1) Whether the I.A. No.6 under order 1 rule 10(2) of C.P.C. filed by the

applicant to implead him as additional defendant as shown in the application is deserves to be allowed ?

2) What order ?

8. The finding on the above point is in the **Negative** for the following:

REASONS

9. **Point No.1 :-** The D.hr has filed the petition against the J.Drs for the relief of recovery of compensation amount. It is submitted that, this is a reference under Sec.18 of the Land Acquisition Act for enhancement of compensation. The property acquired was a house property bearing D. No.896, situated at Kantharaj Urs Main Road, Mysuru, which originally belonged to Smt.M.G. Chaluvajammanni. The said M.G.Chaluvajammanni died leaving behind two daughters namely T. R. Veerarajemmanni and V.S. Chudamani both deceased. The applicant is the grandson of T.R. Veerarajammanni and great grandson of late M.G. Chaluvajammanni. Upon the death of applicant's great-grandmother M.G. Chaluvajammanni the house property devolved equally on her two daughter, namely T. R. Veerarajemmanni i.e.

applicant's grandmother and V.S. Chudamani. Upon the intestate death of applicant's grandmother, her undivided half share in the aforesaid house property will equally devolve on all the children of T.R. veerarajammanni. As such the applicant is also entitled for a share in the compensation amount awarded in this case.

10. It is further submitted that the decree holders have withdrawn certain amount of compensation without the applicant notice. It is likely that further amount that may be deposited will also be withdrawn without his notice. In the circumstances and he is an heir apparent, he is entitled to come on records and stake his claim. The applicant's father along with other heir have already filed a suit in O.S No.300/2015 on the file of this court. Hence, it is just and necessary to implead him as additional decree holder.

11. On the other hand the learned counsel for the D.hrs have filed objection to the present application contending that the present application is not maintainable in law or on facts. The applicant has misconceived the provision of Order 1 Rule 10 (2).

This is a proceedings under Land Acquisition 1894 is a self contained Code. It is not only the mode and manner in which an application for reference by a person dissatisfied therewith is to be made. Here the applicant failed to implead himself in the proceedings. The application filed by the father of the applicant was rejected by the Civil Court in L.A.C. No.647/1998 and C.R.P.No.809/2002 for reference to Civil Court for enhancement of compensation. The applicant slept over his right and not challenged the order of this court. As such he is not entitled to implead him as additional claimant in this proceeding.

12. It is further contended that, the present Decree Holder who challenged the order in the Civil Revision before Hon'ble High Court and got the proceedings remanded for fresh enquiry. The present applicant had not participated in the said proceedings. As such the applicant is not the party in the proceedings under Sec.18(3)(b) of the Act. The applicant is also not a party in this proceeding which is a disposed off matter with regards to enhancement of compensation. As such the applicant has no right to implead him as additional claimant in the petition. Further, the applicant has suppressed the real facts

and his participation in that reference proceeding and he is not the party to subsequent proceedings. As such he is not entitled to implead as additional Decree Holder in the petition at this stage of proceeding. The applicant has lost his right for enhancement of compensation. The D.Hr will only have the right over the enhanced compensation. The Hon'ble High Court of Karnataka had passed an order on 10.01.2013 in W.P.No.27925/2012 (LA.Res) wherein Hon'ble Justice Mr.Anand Byrareddy held that when the applicant is not a party in the for higher compensation, then subsequently he cannot file an application for impleadment in the said proceedings after final disposal of the case.

13. It is pertinent to note that, in case of **Ind. Development Assam Small Scale Corporation Ltd. vs. J.D.Pharmaceuticals** reported in **AIR 2006 SC 131 – 2005 (9) JT 11**, wherein it was held that,

“there are two types of persons who may be added as party to the suit. (1) Person who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be

granted. In other words, it means that for the grant of relief claimed in a suit, a person who ought to have joined must be added, (2) the second class of persons consists of those who are proper parties i.e., whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.”

14. It is pertinent to note that, the decision reported in **1995 (3) SCC 147** in case of **Anil Kumar vs. Shivanath**, wherein the Hon'ble Supreme Court of India observed that,

“the object of Rule of necessary party is to bring on record all persons who are parties to the dispute relating to the subject matter so as to avoid the multiplicity of proceedings and inconvenience.”

15. It is pertinent to note that the Hon'ble Supreme Court of India explained the concept of necessary parties and proper parties in the decision in case of **UP Awas Evam Vikas Parishad vs. Gyan Devi** – in the decision reported in **(1995) 2 SCC 326** wherein the Hon'ble Supreme Court of India held that,

“Order 1 Rule 10 - right of impleadment and locus – distinction : between the locus and right of impleadment there is a world of difference, the two cannot be equated, a person having locus may not be denied appearance but a person who is necessary party cannot be denied impleadment, the former is permissive, the latter is mandatory option to participate does not mean right to be impleaded a person is impleaded or can claim to be impleaded if it has any interest or lis.”

16. The object of the provision under Order 1 Rule 10 CPC was explained by the Hon'ble Supreme

Court of India in case of **Amit Kumar Shaw and another vs. Farida Khatoon** – decision reported in **AIR 2005 SC 2209** –wherein the Hon'ble Supreme Court of India held that,

“Order 1 Rule 10 – Object behind provision - To save bonafide claimants from being non suited on technical pleas – person under the rule can be added as a party in two conditions. 1) When he ought to have been joined as Plaintiff or defendant and is not so joined and 2) when without his presence the questions in the suit cannot be completely decided”.

17. It is pertinent to note that there are two types of persons who may be added as party to the suit. (1) Person who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be granted. In other words, it means that for the grant of relief claimed in a suit, a person who ought to have joined must be added, (2) the second class of persons consists of those who are proper parties i.e., whose

presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.

18. In **Kasturi vs., Uyyamperumal and others** reported in **(2005) 6 SCC 733**, the Hon'ble Apex Court observed that,

"it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are -

(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings

(2) no effective decree can be passed in the absence of such party."

19. In **Razia Begum Vs. Anwar Begum** reported in **AIR 1958 SC 886**, the Hon'ble Apex court laid down the following broad principles:-

"(1) "That the question of addition of parties under R.10 of O.1 of the

Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

(2)That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;

(3)Where the subject-matter of a litigation, is a declaration as regards status or a legal character,

the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions⁸ of Ss.42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status,

such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest', as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in S. 43 of the Specific Relief Act, is not exactly a rule of res judicata."

20. In another decision in the case of **Mahadeva Rice & Oil Mills Vs. Chennimalai Gounder** reported in **AIR 1968 Mad. 287**, the Hon'ble Madras High Court, explained shortly but vividly the basic object of the provision Order 1 Rule 10 C.P.C., and laid down the following principles:-

1) If, for the adjudication controversy" between of the "real parties" on record, the presence of a third party is necessary, then he can be impleaded.

2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined avoiding and set multiplicity subject-matter which at rest, thereby of suits over could still have been decided in the pending suit itself;

3) The proposed subsisting, party direct has and a defined, substantive interests in the litigation, which interest is either legal or equitable and which right is cognizable in law;

4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be

considered by the Court in the pending litigation; and

5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject- matter of the suit.

21. In another decision in the case of **Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount and Thuya Viagula, Annai Church represented by the Trustee**, reported in **2004(2) C.T.C. 183** the Hon'ble Madras High Court considered the right of a third party to claim addition of party. It was held as follows:-

“(iii). The person to be added as one of the parties must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that

he has relevant evidence to given on some of the questions involved, but it should make him as necessary witness.

(iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

(v). The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's certain circumstances. Consent The under discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions

contained in Order 1 Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party.

(vi) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(vii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those

are jeopardized by the persons already on record”

22. In another decision in the case of **Mumba International Airport vs., Regency convention Centre** reported in - **AIR 2010 SC 3109** the Hon’ble Apex court gave some illustrations regarding exercise of discretion for adding of parties as follows:-

1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for

specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was

not entitled to any relief in the suit.

4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit or the court may direct such applicant to be impleaded as a

proper party, either unconditionally or subject to terms.”

23. In case of **Dhanalakshmi vs. P.Mohan** in the decision reported in **AIR 2007 SC 1062** wherein the Hon'ble Supreme Court of India held that,

“Order 1 rule 10 CPC : purchaser from some of the co-owner – whether has the right to come on record in a partition suit - held bonafide purchasers from some of the co-owners are entitled to come on record in order to work out the equity in their favour at the time of final Decree proceedings , they are necessary and proper parties – Held preliminary Decree passed in their absence as bad in law.”

24. It is pertinent to note that, as per the affidavit of the applicant filed by the applicant, the applicant is the grandson of T.R. Veerarajammanni and great grandson of late M.G. Chaluvajammanni. Upon the death of applicant's great-grandmother M.G.

Chaluvajammanni the house property devolved equally on her two daughter, namely T. R. Veerarajemmanni i.e. applicant's grandmother and V.S. Chudamani. Upon the intestate death of applicant's grandmother, her undivided half share in the aforesaid house property will equally devolve on all the children of T.R. veerarajammanni. On the other hand, D.hr has objected that the application filed by the father of the applicant was rejected by the Civil Court in L.A.C. No.647/1998 and C.R.P.No.809/2002 for reference to Civil Court for enhancement of compensation. The applicant slept over his right and not challenged the order of this court.

25. It is pertinent note that, the Hon'ble Apex Court has held that the Land Acquisition Act, 1894 is a self-contained Code. It not only provides for the mode and manner in which the acquisition proceedings are initiated but also the mode and manner in which the proceedings for making an award as also the mode and manner in which an application for reference by a person dissatisfied there with is to be made. A reference may be prayed for by a person interested in the proceeding. Ordinarily, he should be a party to the proceedings for making an award. He has to make an

application seeking reference, before the Collector of the District within the time specified thereunder. The petition may be as regards the measurement of land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation amongst the persons interested. The Reference Court, at the same time is not a Court of original jurisdiction. It derives jurisdiction only in terms of the order of reference. The manner in which the reference is to be made and the statement required to be made by the Collector or the Land Acquisition-Officer has been specified in Section 19 of the Act. The *lis* between the parties to the reference, meaning thereby a person interested and the State, when is with regard to the quantum of compensation, the Reference Court would only derive jurisdiction from the terms of reference. Even otherwise, a Civil Court can direct impleadment of a third party in a suit only in a case where he is a proper or necessary party and otherwise has an interest in the subject-matter of the suit. Even a Civil Court ordinarily would not entertain a petition for impleadment of a third party in a *lis* pending before it which would enlarge the scope and ambit of the dispute between the parties. In the event, there is a

dispute in regard to the title or apportionment of the amount of compensation, a proper reference has to be made. Only when such a reference is made, the dispute can be gone into by the Reference Court.

26. The brief facts were that certain lands belonging to the appellants were acquired by the State. The Land Acquisition Officer had fixed certain amount of money per acre in respect of the lands. The Civil Court however, proceeded to grant a uniform rate of higher compensation. There were disputes with regard to the entitlement of the compensation. The Land Acquisition Officer therefore had made a reference to the Court for the apportionment of the compensation among various claimants. Dhhs had not accepted the award and had made applications in writing to the Land Acquisition Officer within the time allowed by law, seeking reference of the matter for determination by the Court. No reference was made by the Land Acquisition Officer on those applications. When the matter was before the Reference Court, the Court proceeded on the footing that the reference made to it by the Land Acquisition Officer was not merely limited to the apportionment of the

compensation, but also with respect of the amount of compensation.

27. That the Section 12(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'LA Act', for brevity) provides that after an award is filed in the Collector's Office, it shall be final and conclusive evidence as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among the persons interested. The only manner in which finality of the award can be called into question is by resorting to the provisions of Section 18 of the LA Act. Sub-section (1) reads thus:

"18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the

compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested”.

28. The proviso to sub-section (2) prescribes the time within which an application under sub-section (1) is to be made. Section 19 provides for making of a reference by the Collector and specifies the matters which are to be comprised in that reference. Thus the matter goes to the Court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the Court to consideration of the contention of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the Court arises solely on the basis of a reference made to it. When the reference was only in regard to the apportionment of the compensation amongst various claimants, it would not invest the Court with the jurisdiction to consider a matter not directly connected with it.

29. The facts were that land of Dhars was acquired under Section 4(1) of the LA Act for a public purpose. In an inquiry under Section 11 by the Land Acquisition Officer, the appellant had laid claim to one-fourth share of the compensation along with other co-owners. It was found as a fact that the compensation was apportioned into one-fourth share to each of the co-owners and the parties received the same. One of the co-sharers sought for reference to the Civil Court under Section 18.

30. It was contended that under Section 53 of the LA Act, the procedure prescribed under the CPC is applicable to proceedings of the Civil Court unless they are inconsistent with any of the provisions contained in the Act. Since Order 1, Rule 10 of the CPC requires impleadment of all necessary and proper parties, the appellant being a necessary party to the proceedings, she was entitled to the same compensation as was awarded to other claimants. This contention was negated by the Apex Court and it was held that the Scheme of the Act is inconsistent with the CPC regarding entitlement to claim compensation under the LA Act. The CPC provides the procedural format to

adjudicate a dispute after the award is made under Section 11 of the LA Act. The Land Acquisition Officer was required to issue notice under Section 12 to the parties. As contemplated under Section 30 of the LA Act, the appellant was entitled to receive the compensation either under protest or without protest. When the compensation is received under protest under sub-section (1) of Section 18, the application in writing has to be made within the limitation prescribed under Section 18(2) to the Land Acquisition Officer objecting either to the extent of land, classification, value of the land or apportionment of the compensation and upon receipt thereof, reference to the Court would be made. The applicant would be required to state the grounds on which objections are raised to the award of compensation *etc.* A valid reference is a pre-condition for the Civil Court to adjudicate the objections raised in the reference application. Since it was found that the appellants had not made any application under Section 18(1), the jurisdiction of the Civil Court to determine higher compensation as laid down under Section 23 of the LA Act would not arise. It was further laid down that the procedure prescribed under Sections 18 and 30 of the

LA Act are inconsistent with the procedure prescribed under Order 1, Rule 10 of the CPC, which provision would apply to implead a necessary or a proper party to ensure a complete adjudication of all disputes between the parties, who may be bound by the decision. That is a question which would not arise in the procedure prescribed under the LA Act. It is upon a valid reference being made, the Civil Court would get jurisdiction to conduct an inquiry and it is at that stage, the procedure of a trial as contemplated under the CPC would apply in terms of Section 53 of the Act.

31. The question then is whether the execution court which passed the award in LAC No. 38 / 2006 had jurisdiction to implead the non-parties to the award and make the award in their favour. It is settled law that the execution court cannot go behind the award and decree. It has jurisdiction only to execute the decree made under Section 26 and in case of an appeal, under Section 54 and further appeal under Article 136 of the Constitution to this Court as may be modified in the appellate decree which ultimately would be the executable decree. Besides the decree, the execution court is devoid of jurisdiction and power

to go behind the decree either to implead third parties to it who are not persons claiming right, title and interest in the decree through the decree-holder nor does it have power to pass an independent award and decree under Section 26 in favour of the third parties. The civil court gets jurisdiction to award compensation higher than the compensation made under Section 11 in respect of the acquired land only on reference under Section 18. It is not an ordinary civil court under Section 9 of the Civil Procedure Code but a court constituted for the purpose of deciding the compensation for the acquired land under the Act on reference to an established court. Under the Act even a Special Judge could award compensation on reference under Section 18. The execution court cannot even amend the decree of inter partes. The only remedy for the inter partes would be to have the decree, as engrafted under Section 26, or modified or affirmed in appeal either under Section 54 or under Article 136 of the Constitution, as the case may be. The execution court, therefore, is devoid of jurisdiction and power to amend the decree or to award compensation and statutory benefits to the petitioners.

If the present application is allowed it would be a nullity.

32. It is argued by Applicant Counsel that, the petitioners being co-owners, they are entitled to compensation on a parity with other co-owners and the denial thereof is violative of Article 14. We find no force in the contention. Having laid independent claims and sought reference under Section 18, the right and remedy are only as provided under Section 18 or on an appeal under Section 54 but not by way of getting impleaded on the premise of a co-owner. Merely because one of the claimants had got higher compensation, others do not automatically get the same compensation unless the remedies, as provided under the Act, are availed of. One of the remedies under the Act is Section 28-A; if it is available according to law. Determination of higher compensation in favour of some claimants or so-called co-owners and denial thereof to other claimants is not violative of Article 14 of the Constitution. The subject-matter having been regulated under the provisions of the Act, the right and remedy for higher compensation should be sought and had only under the Act. The

principle of equality of Article 14 cannot be extended in that behalf. In such being the case the applicant is / was not a parties to the previous proceedings and they are not filed an application for reference the matter to reference court, in such circumstances the applicants are not entitled to get themselves implead as Dhr for the benefit.

33. Therefore the judgment relied by the Dhr Counsel in case of ***Shambanna v. Special Land Acquisition Officer***, reported in **(2013) 5 Kant LJ 509** and in case of ***Ramesh Singh v. State of Haryana***, reported in **(1996) 4 SCC 469** is aptly applicable to the present case. From the above discussion I am of the opinion that, the present application filed by the applicants are not entitled to implead themselves in the execution petition as Co-Dhrs in the present petition as they are no the parties in L A C petition. Hence I answer **Point No.1** is in the **Negative**.

34. **Point No. 2:-** From the aforesaid discussion, I proceed to pass the following :

ORDER

I.A No.6 filed by the applicant under Order 1 Rule 10(2) of CPC is hereby **Rejected.**

In view of facts and circumstances no order as to cost.

(Dictated to the stenographer directly on computer, then corrected by me and then pronounced in the Open Court on 03rd Day of November 2023).

(A.C.Dayanandmurthy)
V Addl. Senior Civil Judge
& J.M.F.C., Mysuru.