

IN THE COURT OF THE II ADDL. CIVIL JUDGE & J.M.F.C. HARIHAR

Dated this the 29th day of May, 2024

OS No.87/2022

ORDER ON I.A.No.VII

The plaintiff has filed an application U/O.6 Rule.17 R/w Sec.151 of CPC., seeking permission to amend the plaint schedule as shown below in schedule;

(1) To insert the following Para No.21(A) after the existing Para No.21 of the Plaint on Page 10 as follows:

"It is further submitted that after the institution of the above suit and during its pendency, on 10-12-2022 being a second Saturday, the Defendants and particularly the Defendant No.1 along with their henchmen and supporters together with JCB machines came near the suit schedule property and illegally and forcibly demolished a portion of old stone compound wall on the eastern side of the suit schedule property built long back to secure the properties of the Plaintiff and its campus, at two portions on northern and southern side by forcefully and illegally without any right or authority by using JCB machines with the help of their henchmen and thereby they have not only damaged the said stone compound wall but also have removed the stones therein creating 02 big sized openings and have thus caused substantial loss to the common wall and since that portion of the stone compound wall has been illegally, damaged and demolished by the Defendants, the same is causing greater threat of security to the Plaintiff and the inmates of their campus.

It is further submitted that this act of the Defendants cannot be

justified on any ground and because allowing those openings in the stone compound wall to remain like that is going to be a source of threat to the security of the Plaintiff's property and as the Defendants only have caused this damage and loss, they are liable to make good the same by reconstructing the said demolished stone compound wall to restore it to its original position and hence, it is just and necessary that this Hon'ble Court orders for granting a Mandatory Injunction against the Defendants directing them to reconstruct the 02 portions of the old stone compound wall so demolished and damaged on the eastern side of the Plaintiff's property and on their failure to do so, alternatively, to direct the Defendants to pay the Plaintiff a sum of Rs.66,584-00 being the estimated costs of reconstruction of those 02 portions of the stone compound wall to enable the Plaintiff to reconstruct the same".

(2) To insert the following Para as (dd) in prayer column after the existing the prayer column (d) on Page 11 of the Plaint:-

"For a Mandatory Injunction directing the Defendants to reconstruct the 02 portions of the demolished stone compound wall on the eastern side of the suit schedule property and to restore it to its original position within a period to be fixed by the Hon'ble Court or in the alternative, on their failure to do so, to direct the Defendants to pay the Plaintiff a sum of Rs.66,584-00 being the estimated costs of reconstruction of the damaged and demolished 02 portions of the stone compound wall on the eastern side to enable the plaintiff to reconstruct the same".

2. The said application is filed when the case was posted for plaintiff evidence.

3. In the affidavit filed in support of the IA No.VII, the applicant

has stated that, on 2nd Saturday of December 2022 the defendants came near the suit schedule property with men and JCB machines and demolished a portion of the old stone compound wall built on the eastern side of the campus and tried to illegal entry to the campus and also threatened the plaintiff from proceeding with the suit. At that time, the plaintiff with the help of staff members and students stopped the illegal act of the defendant from causing further damage to the property and further demolition of the stone compound wall. Thereafter, the plaintiff lodged complaint before the police.

4. The plaintiff further stated that, the proposed amendment is an subsequent events and required to be incorporated in the plaint by way of an amendment to the plaint.

5. Further stated that the proposed amendment does not change the nature of the suit and it is connected with the main reliefs sought for and by allowing the proposed amendment no prejudice will be caused to the other side. Hence, prays to allow the application.

6. The defendant No.1 and 2 have filed their objections and contended that, the application filed by the plaintiff is not maintainable under Law. The application filed by the plaintiff is only to give trouble and harassment to the defendants. The application filed by the plaintiff will change the nature of suit and cause of action. The plaintiff is not the owner of the suit property in question and it is the defendant No.1 being the purchaser and owner of the particular bit of land bearing Sy.No. 27, measuring 01 acre 19.04 guntas of Harihar which has been alienated by the Deputy Commissioner, Davanagere on 30/06/2016 along with other lands

totally 21 acres 15 guntas land situated Harihar. The said fact is within the knowledge of the plaintiff. At this stage if the application is allowed it is the defendants will be put to Legal injury and hardship. Hence, they prayed to dismiss the application.

7. Heard the arguments on both sides.
8. The point that arise for court consideration are as under;
 1. Whether the plaintiff proves that the proposed amendment is necessary to adjudicate the matter which is in dispute ?
 2. What order?
9. My answer to the above points are as under;
Point No1 - In the affirmative
Point No.2 - As per final order for the following;

REASONS

10. POINT NO.1:- The plaintiff has filed the instant suit against the defendants for the relief of declaration and permanent injunction.

11. The plaintiff has sought for the amendment of the plaint about the facts / subsequent events, which are after filing of the suit and also for the relief of mandatory injunction to reconstruct the demolished stone compound wall and damage or loss alleged to be caused by the defendants on 10-12-2022. The proposed amendment is necessary for final and effective adjudication of real matters in controversy between the parties. It will not amount to change the nature of the suit. Hence, the applicant/plaintiff made sufficient grounds for allowing the application and it is just and necessary to

amend the plaint for proper adjudication of the dispute between the parties. Accordingly, this Court answer the Point No.1 in the Affirmative.

12. POINT NO:2 :- In view of my answer to the point No.1 as stated above this Court proceed to pass the following-

ORDER

I.A.No.VII U/O.6 Rule 17 R/w Sec.151 of CPC
filed by the plaintiff is hereby allowed.

The plaintiff is directed to carry out the
amendment and furnish the amended plaint.

For amendment of plaint.

Sd/-

II Addl.Civil Judge & JMFC
Harihara.