

**ORDER BELOW EXH.05 IN RCS NO.26/2024**  
(Nitin V/s. Ishwar & Others)

**1]** The plaintiffs have filed the application for Temporary Injunction to restrain defendants from changing the idols of Shriram, Laxman and Sitamai.

**2]** It is contention of the plaintiffs that, temple property is situated at Nandagomukh, Tq. Saoner from the year 1942 and the forefather of plaintiff have purchased by way of sale deed and names were mentioned in the revenue record. The forefathers of Plaintiff have given authority to Ramji Marahte for construction of temple over the property. Thereafter the forefather of Plaintiff and Ramji constructed the temple of Shriram, Lakshaman and Sitamai. After death of the forefather, Plaintiff started maintaining the temple till today the Plaintiff maintaining the day to day affairs of the temple and are also performing Puja activities. The temple is around 80 years old and idols of Shriram, Lakshaman and Sitamai were also more than 80 years old. The said temple is a historical place since last more than 80 years. For the convenience of villagers the keys of temple where handed over to the known person who was resident of village. The villagers who believed in God where offering Puja activities and other activities in the said temple without any hindrance from anybody. Defendant no. 1 is resident of village and defendant No. 2 who's name is painted on the wall of temple is showing to be the president of proposed executive body and defendant No. 3s name is painted on the wall of the temple showing to be the secretary of proposed executive body who are doing illegal activities in the temple.

**3]** The the defendant no.1 started illegal activities and made a propaganda in village that, he is going to renovate the temple and also changing the old historical idols of Shriram, Lakshaman and Sitamai.

defendant no.1 has also fixed the scheduled program of changing the idols of Shriram, Lakshaman and Sitamai on 4 /4/2024. The Pamplates are widely circulated in Saoner town and it is also mentioned that the activity of changing idols of Shriram shall be started from 01.04.2024 to 4.4.2024. The schedule of changing idols is fixed on 4.4.2024. Defendants have also called Ramkatha watchak Santoshi Maharaj Nimbalkar during the said period. This all program was scheduled without consent with Plaintiff and from the villagers resident of Nandagomukh. defendant no.1, since last 2 to 3 years trying to create problems he also tried to prevent entry of Plaintiff and his family during the Ram Birth Ceremony. Defendants are creating problems to the Plaintiff and his family members and trying to prevent them from offering their Puja which is their constitutional right. defendant no.1 intends to keep away the Plaintiff and his family members away from idol of Shriram Lakshaman and Sitamai. Defendants have also with the help of villagers carried out illegal construction work in the past times and fixed the the tiles in the temple without permission of Plaintiff and other villagers.

4] Defendant have no legal and moral authority to take decision in respect of old temple of Shriram. The temple is historical place and the said temple is in possession of Plaintiff. It is submitted that since Plaintiff is permanently residing at Nagpur and as an alternate arrangement, key of temple was given to defendant no.1, being the local resident and it was his responsibility only to open the temple and close the same in the evening. defendant no.1 is taking undue advantage of the same and started illegal activities. There is absolutely no need to change the idols as all the villagers are having emotions with the old temple and old idols. defendant no.1 has not taken any permission to change the idol from competent authority. All the illegal activities are going on in dark. defendant no.1 deliberately did not mention his name on the pamphlets

i.e. invitation card but actually he alone was conducting all the illegal activities. After knowing these facts Plaintiff approached to defendant no.1 on 26.02.2024 but, the defendant behaved adamantly. Thereafter Plaintiff issued letter to Grampanchayat on 27.02.2024 and requested to look into the matter and make enquiry. The Grampanchayat have not taken any action against defendant no.1.

5] When defendant no.1 got the knowledge about the application he immediately painted the list of proposed executive body on the wall of the temple. He painted name of one Manohar Gharmare as President, name of the Arun Dakhole, Keshav Wankhede and others. No such body formed and actually to create doubts in the mind of villagers defendant no.1 has painted on the wall of temple. Plaintiff as well as his forefathers were maintaining the temple and also maintaining the old idols of Shriram, Lakshaman and Sitamai. Defendants have no right or authority to take decision in respect of management of temple as well as its renovation and changing historical idols of Shriram Lakshaman and Sitamai. Defendants have taken the decision without permission of competent authority, villagers and Plaintiff. The Plaintiff being in possession of the property and for good cause and to restrain the defendant from doing such illegal activity plaintiff is invoking the jurisdiction of this court by way of filing suit for permanent injunction and accordingly by way of filing temporary injunction application.

6] Defendant no. 1 to 3 filed his written statement and say to the application below Exh.16 and resisted the same. Defendants have specifically denied all the contentions raised by the plaintiff. It is specifically pleaded that, suit is not tenable and bad in the eye of law. The suit is specifically barred under local statute. The Plaintiff has suppressed material facts in claiming equitable relief. The Plaintiff has not come with clean hands before the court. The suit for injunction is not tenable without

claiming any substantial reliefs. Plaintiff alone is not in exclusive possession of suit property his claim for injunction alone automatically fails. The Plaintiff has not provided any iota of evidence to substantiate his claim for private temple. The suit is not correctly valued. The Plaintiff has not made party to the suit whose names are mentioned in para 10 of the plaint. The entire villagers of Nandagomukh having interest in the subject matter of the suit and unless and until the these persons have made party as a necessary and proper party the effective adjudication will not be possible. Accordingly, the injunction as claimed by the Plaintiff is granted to him it would be a futile exercise. The Plaintiff has failed to establish his nexus with the suit property.

7] It is further submitted that, about 110 to under 125 years back the villagers of Nandagomukh constructed Shriram temple in the open area Gaothan by making public contribution on the bank of Jogga River. The idols of the said temple was erected in lime and sand. The villagers and deties of adjoining villages had immense faith in the said temple. The religious functions are regularly held in the temple. The number of devotees increased the funds for management started falling short. Some of the religious person donated their land in the name of Shriram Devsthan. Initially one Ramchandra Madhavrao Gadhe was its Pujari/priest performing daily worship on the idols. Some group of local villagers used to perform and maintain the temple yearly. Some improvements where made in the structure of temple by fixing Granite,tinshades etc. Annual repairs were done time to time. On on 6.3.1985 a bank account was open in local branch of Bank of India in the name of Shriram Devsthan. At present amount of ₹ 2,69,625 is laying in the said account which is to be utilised only for the purpose of temple. The City Survey Department of Nandagomukh has recorded its area as city survey No. 593 sheet No. 7 having area of 321.8 Sq.Mt and land bearing survey No. 614

and 738 is situated faraway from the temple. The temple is situated in main village area and fields are situated faraway from it. Further submitted that Plaintiff and his forefathers shifted to Nagpur about hundred years back and no member of Gadge family is residing at Nandagomukh. Ramchandra Madhao Gadhe was priest in the said temple in the British regime but after his death his legal heirs migrated to nagpur. Thereafter the management of temple was looked by local punch committee. Except Ramchandra Gadge no any other members of Gadge family ever looked after or cared for the affairs of management and functions of the said temple. The Plaintiff has concocted false story.

**8]** On 15.08.2013 Gramsabha was called and it was decided to register a trust before The Charity Commissioner, Nagpur by forming a body. The proposal was unanimously accepted by all the villagers and new punch committee under President ship of defendant No. 2 and vice president Arun Dakhole, Secetary Dhananjaya Ajabarao Ghormare, joint secretary Keshav Lakshman Wankhede and Treasurer Youvraj Moreshwar Kinarkar, and other members. It was further resolved to change the name of Vahiwaatdar by Gramsabha from the Revenue Record of the survey number sizes of the 614, 738 and 718. There were specifically noting that Plaintiff and his sister's are utilising the income of the fields for their personal gains instead of spending on the functions of the temple. The Proposal of filing proceedings before Asst. Charity Commissioner, Nagpur for the registration of the trust was approved by Gramsabha, which is pending before the competent authority. Plaintiff has appeared in the proceedings and now the proceedings is pending for recording evidence and trust is likely to be formed in near future. The Plaintiff has suppressed this material fact from the court.

**9]** The idols are erected in lime and sand and with passage of time the idols started deteriorating. The legs of Lord Shriram is cracked

and it is above to fall. Idols of Laxman and Sitamai are damaged. As per the religious beliefs no Puja or worship is performed of such damaged idols. Hence the entire villagers and Wahivaatdaar decided to change the idols and replace the same with marble idols to be procured from Jaipur Rajasthan. With the consent of spiritual leaders and upon their approval punch committee has ordered the idols of Shriram, Laxaman, Sitamai and Hanuman worth ₹ 1,01,101/-. The change of Idols are approved by Gramsabha and the villagers. The intention of change of idols is with the approval of the villagers, punch committee is and to perform a function of conscreation at the hands of Santoshi Maharaj Nimbalkar was arranged from the public funds. Everybody including Plaintiff is aware of such function and nobody objected to it. Thousands of people and devotees are likely to attend the said function. The function is being funded by public donation and charities and is in final stages. The public faith and sentiments of devotees are involved in performance of such functions.

**10]** The Plaintiff has come with a false case. The Plaintiff who seldom visit village Nandagomukh or the temple has no personal interest in the subject matter of the suit. The functions are organised by the Panch committee and the villagers. The Plaintiff who used to regularly contribute in the annual functions of this temple, intentionally did not pay a single Pai in the ensuing function only to create Chaos, public outcry, injuring public religious sentiments and affect the said temple health sacred by local villagers with the intention thereby insulting the religious of class person. The Plaintiff has no any right to create obstruction in the smooth performance of the function and create a law and order situation. The entire suit and temporary injunction is be devoid of any merits. Hence, requested to reject the application.

**11]** Heard Ld. Advocate Shriram Deoras for the plaintiffs and Ld.

Advocate S.M.Pande for defendants. Considering the rival contentions and the documents filed on record following points arise for my consideration and I have recorded my findings along with the reasons as below:

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff proved the Prima Facie?	In the Negative.
2.	Whether the balance of convenience lies in favor of plaintiffs?	In the Negative.
3.	Whether the plaintiff will suffer irreparable loss if the injunction is not granted?	In the Negative.
4.	What order ?	As per final order...

### REASONS

**12]** Plaintiffs have filed dated 22 July 1942, Copy of 7/12 Extract of suit of that No. 782/1, Copy of record of right 782 , copy of 7/12 extract of survey no 614 and 738,copy of 8 A extract, copy of order letter to Grampanchayat , invitation card, on the other hand, defendant has filed copy of P1 sheet, copy of sale deed, copy of record of rights, copy of 7/12 extract, resolution passed by Grampanchayat, copy of 7/12 extract, copy of 8A extract, copy of 7/12 extract of survey No. 738, copy of 7/12 extract of survey No. 614, 8 A extract, copy of passbook, letter given to District Magistrate Nagpur, certificate given by Grampanchayat about residence of Plaintiff, Bill of amount given to prepare idols, invitation card, photos of Shriram, Lakshaman and Sita. Resolution passed by Grampanchayat.

**13]** It is submitted by Ld. Advocate for the plaintiff that, the

subject matter of the suit is temple. The temple and the idols therein are more than 80 years old. The land on which the temple is built is owned by plaintiff's forfather and after their death by the Plaintiff. Name of Plaintiff can be seen from 7/12 extract. The old sale deed is in favour of Ramachandra . Defendants without having any authority and without obtaining consent of Plaintiff and other competent authority have taken decision to arrange a function and change the idols of Ram Lakshaman and Sitamai. The temple is historical and defendants have not taken any permission of historical department, Tahasildar and verified and inspected the status of the idols. The Grampanchayat has behind back of Plaintiff passed a resolution to delet the name of Plaintiffs from Record of Right which is illegal and without giving any notice to the Plaintiff. All these activities are done by defendants and Grampanchayat to discard Plaintiff from their own benefits. The Grampanchayat has falsely issued certificates stating therein that, Plaintiffs are not residing in village and they are having no immovable property in the village. At present there is no trust in existence so this Court has jurisdiction to try the suit. Defendants have not taken any expert opinion about the damage of idols. The idols can be repaired very well and there is no urgency to change or replace the idols.

**14]** The temple is for people and it is not plaintiff's private property. The name of Plaintiff appears in record of rights and he has right to restrain defendants from making any activities without consent of Plaintiff. The new idols can be preserved till the decision of this court or till pending enquiry before Charity Commissioner. Defendants have shown no documentary evidence on record to show that, they are having right to change the idols of the temple. Defendants have no right and if they have right, let the right be decided first by competent authority. Defendants objections are all subject to evidence. Defendant has to prove what authority they have to change the idols. Defendants are unknown.

Mahurat will come on every year and there is no urgency to change the idols unless there are inspected and approved by competent authorities. Hence prayed to allow the application. Thus, plaintiff has shown prima facie case and temporary injunction is not granted in favor of plaintiff, the plaintiff will suffer from loss which cannot be compensated in the terms of money. Hence the balance of convenience lies in favor of plaintiff. Hence, prayed to allow the application.

**15]** On the other hand, Ld. Advocate for defendants submitted that, Plaintiff has admitted that, the temple is not his private property and it is a public property. The Plaintiff has not shown any documentary evidence to show that, there is a nexus between Ramchandar and Plaintiff. The Plaintiff has not given details of the property in a pleadings. The sale deed is of house property. No evidence to show the temple was constructed by forefather of Plaintiff as pleaded. The Concreation ceremony was arranged by all the villagers as they have faith in the temple. Plaintiffs are not owner of the temple to take their consent. It is the villagers who have unanimously decided to change the idols of Ram. The the Plaintiff have not filed any affidavit of any of the villagers stating that, they are against to change the idol of Ram Lakshaman and Sitamai. There is no entry in Record Of Right, More particularly on survey No. 614 and 738 that on the said land temple is constructed. On the contrary the documents filed by defendant prima facie shows that from 1911 land survey No. 782 donated in the name of Shriram temple. Such is the case of survey No. 593. The name of Gadge does not appear in any of these entries. The temple was constructed in Gauthan and after city survey it is numbered as 593. The villagers have contributed and donated money, land and from that contribution idols where constructed by lime and sand. Annual functions are conducted at the expenses of the villagers in the temple. The plaintiff cannot become owner of the property.

**16]** There is no prima facie on record to show that defendants have illegally constructed tiles in the temple as pleaded by Plaintiff. Gadge was only a priest of temple, and after his death descendants shifted at Nagpur and they seldom time, come at the village. Plaintiff where utilizing the income from themselves and accordingly Grampanchayat has passed resolution. Defendants have not organized the program but the villagers have organized the same and they have filed application in the present suit to implead them as a party defendants. As per Hindu shastra and puran it is not desirable to worship the idols which are broken, or about to break. The affidavit filed by Bramhan Joshi the idols are broken. It can also be seen from the photographs that, the idols are broken and not in a fit position to worship. The Mahurat is of 4/4/24 is good by all means to replace the idols.

**17]** The idols are been replaced with the consent of the villagers. The Plaintiff is having no concern with the temple. The Plaintiff has not shown any instance when defendant obstructed him. The suit is bad for non joinder of necessary parties. A simplicitor suit for injunction is not tenable.. There is no pleading of Plaintiff that he is having personal right with the temple. The enquiry is pending with the charity commissioner and this Court has no jurisdiction and the civil Court is barred from taking cognizance as per section 80 of Bombay Trust Act. The Plaintiff has failed to show prima facie case and balance of convenience lies in his favour and no loss would be caused to the Plaintiff in case the application is rejected. Hence prayed to reject the application.

**18]** Before going into the facts of the case it would be proper to discuss all the legal issues which are raised by the defendants. The defendants have specifically argued that, when the enquiry is pending before the Charity Commissioner the Plaintiff have no right to file suit in

civil court as there is specific bar of section 80 of Bombay Trust Act. On the other hand Plaintiff has argued that the suit is tenable as the enquiry has not completed before Charity Commissioner. It is pertinent to note here that, the Hon'ble Bombay High Court in its order in civil revision application No. 4 of 1999 dated 26<sup>th</sup> of February 1999, the trust will come within the ambit of the public trust only after it has issued certificate of registration under rule of Bombay Public trust rules and on completion of enquiry under section 19 and after order is passed under section 20 of Trust Act. Unless this procedure is completed it cannot come under the definition of public trust as defined under section 2 (13) of the act. In the present case in hand the enquiry is still pending which is admitted by both the parties. In these circumstances Plaintiff have only remedy to seek relief before the civil court and not before the charity commissioner. Hence, at this juncture the defence raised by the defendants on the point of jurisdiction is devoid of any merits.

19] It is pertinent to note here that, it appears from the record of rights the name of Plaintiff and his sisters as co-possessor and the suit is filed only by Plaintiff alone. The sisters are also necessary parties to the suit. So far as defendants are concerned defendant no.1 to 3 are the proposed office bearers of the proposed trust under enquiry which is filed before charity commissioner in the year 2013. On perusal of invitation card, it nowhere reflects name of defendants as they have organized the function. On the other hand it reflects that, it is the villagers who have organised the program of replacing the idols. It demonstrates that the villagers have faith in the temple of and with their consent the decision to replace the idols is taken. Further villagers at large and the villagers who have filed application to include them as necessary parties are certainly necessary parties to the suit. The invitation cards filed by defendants of last 3 years also shows that, the program was arranged by the villagers

every time and not specifically by the defendants. No doubt, defendant no.1 to 3 are part of villagers but as the suit is only for perpetual injunction the order and decree will be binding upon the parties to the suit and not public at large. It means binding in personam and not in rem. Considering this legal aspect even if, the order is passed in favour of Plaintiff it will not be executable against all the villagers.

**20]** Moreover, the document filed by the defendant at Sr No. 21, which is a letter addressed to the collector, Nagpur dated 5/5/2023 stating therein that, the temple is not registered and temporary body be formed to look day to day affairs of the temple and to take decision to replace the idols which are not fit for worship of the villagers. The letter is signed by near about 92 persons from the village. It demonstrates two material things, 1) involvement of all the villagers in regard of taking decisions of the temple and the idols are in broken state from the year May 2023.

**21]** The sale deed filed by the Plaintiff does not reflect any survey number on the contrary it shows that it is in regard of a dwelling house along with open land. The the Plaintiff has not prima facie brought any documentary evidence to show that, the property mentioned in sale deed and the survey numbers which reflects name of Plaintiff is one and same. No doubt, the 712 extract shows name of Plaintiff and his sisters as co-possessors along with Ram temple. It is settled principle of law that, mere entries in revenue record does not confer any title or possession. The Plaintiff who has to show on affidavits that, till date Plaintiff is in possession of the temple as pleaded in para-7 of the plaint. There is absolutely no documentary evidence filed by the Plaintiff to show that he is in possession of the temple. Not a single affidavit is filed by the Plaintiff to show that, he is having any concern or possession over the temple till date. No, involvement of Plaintiff can be seen in the affairs of temple from

the documentary evidence filed by the defendants. On the contrary the Plaintiff has opposed the registration of the trust. There is no documentary evidence on record to see on which grounds Plaintiff has entered in the proceedings before charity commissioner. The documentary evidence P1 sheet and city survey record shows that, neither Plaintiff nor his forefathers were in possession of the temple after death of Ramchandra Gadge.. All of a sudden name of Plaintiff was entered as legal heirs wide mutation entry number 186 dated 26 December 2006. There is no prima facie documentary evidence to show that, father of Plaintiff was in possession of temple and after death name of Plaintiff was recorded in revenue record.

**22]** Further from the documentary evidence filed by the defendants the involvement of the Plaintiff cannot be seen in the affairs of the temple at all. It is also pertinent to note here that, the documents filed by defendant shows that, almost on every year the programs of Bhajans and Kirtans and Katha Vaachan are arranged by by inviting the reputed persons and the Plaintiff had never objected those functions and kept mum and has given deemed consent. Absolutely no grounds are mentioned in the plaint why Plaintiff is objecting such programs this time and seeking injunction to restrain such programs scheduled from 1/4/24 to 3/4/24. It is the Plaintiff who has to establish his right over the temple and not the defendants.

**23]** Defendants have filed documentary evidence which shows that by passing resolution in Gramsabha name of Plaintiff proposed to be deleted from record of rights. The Grampanchayat is not party to the suit. The Plaintiff is at liberty to take necessary action against the resolution passed by the Grampanchayat by availing proper remedy.

**24]** The Plaintiff has approached to the court seeking equitable relief, So, it is the Plaintiff who has to prima facie show with documentary

evidence that, the idols can be very well repaired and there is no necessity to replace the idols. The Plaintiff has not filed any documentary evidence in that regard. On the contrary the affidavit filed by Vinayaka Ramdas on behalf of Plaintiff who has personally visited the Ram temple and inspected the idols. He has stated on oath that, he did not find one finger of right leg of idol of Shriram and in the idol of Sita there are only 4 fingers on right leg. It is further stated that by applying layers on the legs of both the idols it can be worshipped and after some time the idols may be changed. On the contrary opinion given by 2 respectable astrologer and Maharaj filed by defendants shows that, the idols are broken and as per Hindu rituals the broken statue are not worshiped. On perusal of 4 the photographs filed by defendant it can be prima-faice is seen that, the idols of Shriram and Sita are broken and as per Hindu Shastra such type of idols should not be worshiped. The reliance can be placed relied by defendants on the 'DharmaShindhu' Published by RajeshPrakashan, page no 472 and 'NirnayShindhu', page 353, wherein it has been specifically stated that, worship of broken idols should not be done.

**25]** The Plaintiff has not shown any reasonable ground or any injury which would caused to him or to the idols if they are not replaced. No prejudice would be called to the Plaintiff in case the new idols are replaced. Moreover, no any irreparable loss would cause to the Plaintiff in case the idols are replaced on the contrary, the villagers who have invested huge amount which can be seen from the documentary evidence, will suffer from irreparable loss. No doubt, new idols can be preserved for some time at the same time there would be no any hardship, prejudice, loss, to the Plaintiff in case the idols are replaced.

**26]** On perusal of prayer clause which are sought in the plaint, it can be seen that the Plaintiff has sought relief of perpetual injunction restraining defendants from changing the old and historical idols from the

temple, restraining the defendants from entering into the temple and to do any activity within the temple premises, issuing directions to the defendants not to touch the historical idols as it is possible that they may cause damage to the old and historical idols, restrain defendants from doing any activity within the temple without permission of the Plaintiff and other villagers. The prayer of temporary injunction is in regard of restraining defendants from making any functions in the temple and restrained to change the idols. It is pertinent to note here that, the Plaintiff is seeking a relief of permanent injunction by way of temporary injunction, which cannot be granted. In case of temporary injunction is granted as prayed, the purpose of Plaintiff for filing perpetual injunction suit will suffice without leading evidence. Such reliefs cannot be granted as per provisions of law. The Plaintiff has not come before the court with clean hands to seek the equitable relief.

27] the plaintiff has not filed any documentary evidence to show that, defendants have ever restrained plaintiff from entering in the temple. In these circumstances, there is no danger, damage or injury to the right of plaintiff to invoke the provisions of order 39 rule 1 of code of civil procedure. The Plaintiff has a miserably failed to prove prima facie case and balance of convenience lies in his favour and no irreparable injury would cause to the Plaintiff in case the application is rejected. Hence, I answer point no. 1 to 3 in the Negative and for point no 4 proceed to pass following order

**ORDER**

- 1) The application vide Exh. 05 stands Rejected.
- 2) Cost in cause.

Date: 01/04/2024

Sd/-  
**(R. B. KULKARNI)**  
2 nd Jt. C.J.J.D, Saoner  
Nagpur.