

ORDER BELOW EXH. 5

(Passed on this 05th day of October, 2023)

Read application. Perused the record and say. This is an application by plaintiffs under Order 39 R(1)(c) of Code of Civil Procedure (CPC) for an injunction restraining defendants from constructing in the suit property which is around the statue of Mahatma Gandhi, as specifically described in the plaint.

The case of the plaintiffs is that-

2. They are owners of house No.244 which is situated in Ward No.1 as per the record of Nagar Panchayat, Parseoni and area of their house is 594 Sq.Ft.
3. There is a way to the North South East of City Survey No. 894 and its area is 4.80 Sq. Meter.
4. There is a way to the North South West side of City Survey No. 893 and its area is 6.8 Sq.Meter.
5. The house of plaintiff is between North South West and North South East and it has a way from the both sides.
6. There is a statue of Mahatma Gandhi on the North South West side of plaintiff's house.
7. There is a platform and iron fencing around the statue of Mahatma Gandhi and thereby width of road has been lessen and it causes inconvenience and hardship to the persons residing in the locality.

8. The defendant No. 1 is having intention to install three statues of Monkey over the platform of concrete from North South West side to North South East side and thereby encroaching on the area of way. Therefore, under these circumstance, they are constrained to file present application.

9. On the other hand, the defendant No.5 has filed his say below Exh.14 stating that the suit is based upon misrepresentation and concealment of facts. Defendant No. 5 has specifically denied that width of road has been lessen due to construction of iron fencing and platform. The plaintiff has not given any description of their property as well as description of suit way. Therefore, on this count, the application may be rejected.

10. Whereas, defendant No.4 has filed his say below Exh.13, stating that suit is not maintainable as statutory notice has not been given. The platform around the statue of Mahatma Gandhi was built with the permission of Gram Panchayat. There is no reason for the plaintiffs to institute present suit as well as present application. Therefore, present application may be rejected.

11. Considering the nature of controversy, the following points arise for my determination and I have my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Do the plaintiffs prove that they have prima facie case ?	In the negative
2.	Do the plaintiffs prove that they have balance of convenience in their favour ?	In the negative

3.	Do the plaintiffs prove that if application rejected, then they would suffer irreparable loss ?	In the negative
4.	What order and cost ?	Application is rejected.

REASONS

AS TO POINT NO. 1 TO 3 :-

12. All points are interconnected to each other, therefore, they are required to be taken up together. In order to seek interim injunction, plaintiffs must show that they have prima facie case and balance of convenience in their favour. In addition to this, plaintiffs must further show what hardship would be caused to them if injunction is not granted.

13. On this legal background, while considering case of plaintiffs, it is seen that plaintiffs have not given proper description of their property and proper description of suit property. In view of Order VII Rule 3 of Code of Civil Procedure, plaintiffs ought to have given proper description of suit property i.e. suit way so as to identify it. But plaintiffs have not given sufficient description of suit property so as to identify it by boundaries or other land mark. Thus, in absence of proper description of suit property, plaintiffs are not entitled for interim relief as prayed by them.

14. It is required to note here that the statue of Mahatma Gandhi was built with the permission of Gram Panchayat, Parseoni as reflected from Proceeding book. It further reflects that the area admeasuring 23 X 22 Sq. Feet (Total 506 Sq.Feet) had been allotted at

that time. The case of plaintiffs that the defendant No.5 constructed in the 105 Sq.Feet in the year 2020 and thereby road was blocked in the width and length. While considering this aspect, it is required to note here that construction of defendant No.5 in respect of statue is appeared to be within the area allotted by the Gram Panchayat. Therefore, contention of plaintiffs is not seemed to be genuine and material one at this stage.

15. Moreover, there is no proper measurement map or any document regarding blockage of way or decrease of width of the road, as pleaded by the plaintiffs. Thus, mere contention can not be considered at this stage.

16. The contentions raised by the plaintiffs are purely question of trial and same cannot be considered without evidence at this stage.

17. Thus, in my opinion, plaintiffs have no prima facie case and balance of convenience in their favour at this stage. If an interim relief is not granted to the plaintiffs, they would not suffer irreparable loss or injury at this stage. Hence, I answer all the points in the negative.

AS TO POINT NO. 4 :-

18. In view of findings to point No. 1 to 3, the application deserved to be rejected. Hence, I proceed to pass following order.

ORDER

Application is rejected with costs.

Nagpur.
Dated : 05.10.2023.

(S. M. Sarode)
Civil Judge Senior Division,
Ramtek.

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R.C.S. No.81/2023
(Order below Exh. 5)

CERTIFICATE

I affirm that, the contents of this P.D.F file of order are word to word, as per original order.

Name of Stenographer : Sau. V S. Boharapi,(Grade II)