

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, RAMTEK.

Reg.C.S. 81/2023
Ismail Shaikh & ors.
Vs. The Collector

ORDER BELOW EXH.91

(Passed on 9th day of March, 2026)

The plaintiff has filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment in the plaint. Ld. Advocate of plaintiff has submitted that the plaintiffs have instituted the present suit seeking declaration, removal of encroachment and permanent injunction against the defendants. Along with the suit, the plaintiffs had also filed an application for temporary injunction. However, by an order passed by this Court, the said application for temporary injunction came to be rejected. The suit is presently pending for adjudication before this Court.

02. It is further contended that, during the pendency of the suit, defendant No.5 filed an application under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of a Commissioner. The plaintiffs thereafter filed their reply and additional reply to the said application. It is further contended that during the pendency of the proceedings, the defendants have placed on record a document dated 06/09/2023 contending that the statue of Mahatma Gandhi was installed with the permission of Gram Panchayat Parseoni, as reflected from the proceeding book dated 10/05/1986, and that the area allotted for the said installation measured 23 × 22 feet i.e. 506 sq. ft. However, the plaintiffs, upon obtaining information through the Right to Information Act from the Nagar Panchayat Parseoni on 24/01/2024, came to know that as per the proceeding book dated 10/05/1986 the actual area mentioned is East–West 22 feet and North–South 11 feet, i.e. 242 sq. ft.

03. The plaintiffs therefore contend that defendants No.7 to 9 have raised construction of an open pavilion (Otaa) and other structures,

including granite work and stainless steel railing, around the statue of Mahatma Gandhi without following the due procedure of law. According to the plaintiffs, such construction is illegal and contrary to the provisions of Section 37A of the Maharashtra Land Revenue Code, 1966, which imposes restrictions upon transfer, development or change of use of Government or Nazul land.

04. It is further contended that, in view of the subsequent facts and documents brought on record, the proposed amendment is necessary for proper adjudication of the dispute and does not alter the nature of the suit or cause prejudice to the defendants.

05. On the other hand, the defendant no.5 has filed his reply and opposed the application on the ground that the proposed amendment is allowed, it will cause prejudice to him and for fulfilling lacuna of the case. The defendant no.7 and 8 have also filed their reply at Exh.95 and strongly opposed the proposed amendment. Whereas, defendant no.4 has also filed his reply at Exh.94 and strongly opposed the application on the ground that, same application is not maintainable for seeking both amendments in the plaint and application for temporary injunction.

06. Heard both sides. It is required to note here that present suit is for removal of encroachment and for other reliefs. Considering the fact that, the plaintiff recently got old information about the suit property through Right to Information Act, and further facts regarding current status of the suit property, in my opinion, the proposed amendment is required to be allowed as it is necessary to adjudicate present matter in effective manner and completely.

07. Moreover, if proposed amendment is allowed, nature of suit will not be changed and no prejudice would be caused to the defendants. Thus, present application is required to be allowed. Hence, I proceed to pass following order-

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ORDER

1. Application is allowed.
2. The plaintiff is directed to carry out necessary amendment in the plaint and application for temporary injunction and file amended copies on record.

Ramtek.
Date : 09.03.2026

[S.M. Sarode]
Civil Judge Senior Division,
Ramtek.