



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5074 OF 2025

PETITIONER :- Girish S/o. Lakhanlalji Agnihotri, Aged about 45 years, Occ - Business, R/o. Near Mahakali Mandir, Pardeshipura, Ramnagar, Wardha Tq. & Dist. Wardha.

..VERSUS..

RESPONDENTS :- Pradeep S/o. Babulalji Agnihotri, Aged about 74 years, Occ - Business, R/o. Near Hanuman Mandir, Pardeshipura, Ramnagar, Wardha, Tq. & Dist. Wardha.

Mr. Firdoz Mirza Sr. Advocate, a/b. Mr. P. S. Thakkar, Advocate for petitioner.

Mr. S. A. Joshi, a/w. Mr. V. R. Mishra, Advocates for the Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **17.06.2026**

J U D G M E N T :

1) **RULE.** Rule made returnable forthwith. Heard finally with consent of learned advocate for the respective parties.

2) Being aggrieved by the order dated 29.07.2024 passed by the learned 5th Joint Civil Judge, Junior Division, Wardha on application at Exhibit-5 in Regular Civil Suit No.75 of 2024 and judgment and order dated 22.01.2025 passed by the learned

District Judge – 1, Wardha in Misc. Civil Appeal No.24 of 2024, the present petition is filed by defendant in Regular Civil Suit No.75 of 2024, who has suffered an order of temporary injunction restraining him from making construction. The appeal preferred by the defendant is also dismissed. The order of temporary injunction and judgment and order dismissing the appeal arising therefrom are subject matter of challenge in the present petition.

3) The respondent-plaintiff has filed a suit being Regular Civil Suit No.75 of 2024 against the petitioner - defendant seeking a decree for perpetual injunction restraining him from dismantling the construction of plaintiff and from making any encroachment on northern side land or making any illegal construction thereon.

4) It is the case of plaintiff that the plaintiff and defendant are in occupation of adjoining lands. The plaintiff contends that he has constructed a wall on the northern side of his plot which separates his plot from the plot of the defendant. The plaintiff has contended that the defendant has started construction over his plot and while making the said construction he is trying to make construction over the portion of plot owned by the plaintiff. The defendant has opposed the suit denying the contention that construction is being made over plot owned by the plaintiff.

5) The plaintiff has also filed an application for grant of temporary injunction in the said suit vide Exhibit 5, which is allowed by the learned Trial Court vide order dated 29.07.2024. The learned Trial Court has granted temporary injunction in the following terms.

“The defendant is hereby restrained from raising any construction on annexed to the northern sidewall of the applicant thereby encroaching on property of the applicant till decision of the suit.”

6) Aggrieved by the said order dated 29.07.2024, the defendant has preferred Misc. Civil Appeal No.24 of 2024. The learned First Appellate Court has dismissed the said appeal confirming the said order.

7) The learned Senior Advocate for the petitioner-defendant contends that there is a wall separating the plot of the plaintiff from that of the defendant. He contends that since there is a boundary wall separating the two plots, the question of making any encroachment while making building construction by the defendant does not arise. The learned Senior Advocate, therefore, contends that the order of temporary injunction cannot be sustained and is liable to be quashed and set aside.

8) The petition was heard yesterday in part. During the course of hearing, attention was drawn to certain photographs as per which a slanting slab of the ongoing construction made by the defendant was found to be resting on the compound wall. The learned Senior Advocate, by referring to the operative portion of the order passed by the learned Trial Court, made a statement that the defendant was ready to demolish a portion of the said slab so that the construction is not made over the compound wall. The petitioner – defendant has filed affidavit dated 17.06.2026 along with 4 photographs. The photographs indicate that initially the slanting slab constructed by the defendant was resting on the compound wall. However, the petitioner – defendant has demolished a part of the said slanting slab which is now not resting on the said compound wall.

9) The learned Senior Advocate, by drawing attention to the photographs states that the construction which was resting on the wall is removed. He therefore contends that the petitioner – defendant should be allowed to continue with the construction since this was the only ground on which construction was being opposed by the respondent – plaintiff.

10) Per contra, learned advocate for the respondent – plaintiff contends that the defendant has made encroachment over the plot of the respondent – plaintiff while making the construction. He therefore contends that concurrent order of temporary injunction passed by both the learned Courts should not be disturbed.

11) Perusal of plaint averments will demonstrate that there is no allegation against the defendant with respect to encroachment. Rather there is a positive statement in paragraph 4 of the plaint that the plaintiff has constructed an east-west compound wall along the northern boundary of his plot separating his plot from the plot of defendant. The contention with respect to encroachment, therefore, *prima facie* cannot be accepted. The slanting slab which was initially resting on the compound wall is also now cut and is not resting on the compound wall which the plaintiff claims to have constructed.

12) Apart from the contention that the construction was being made by defendant, by way of encroachment, no other ground is raised in the civil suit. Perusal of the operative portion of order of temporary injunction will also demonstrate that the learned Trial Court has not passed a blanket order of temporary

injunction against the defendant. The defendant is only restrained from making construction on the northern side wall of the plaintiff by encroaching upon the property of the plaintiff.

13) Having regard to the order of temporary injunction as also the statement made in the affidavit dated 17.06.2026 and photographs annexed thereto, in the considered opinion of this Court, *prima facie* now there is no hindrance in allowing the petitioner – defendant to proceed with the construction. The Writ Petition is partly **allowed** by permitting the petitioner – defendant to proceed with the construction, subject to condition that the construction will not be made over the northern boundary wall intervening the plot of the plaintiff and defendant.

14) Needless to mention that the construction of defendant will be subject to final decision of the civil suit.

15) Rule is made absolute in the aforesaid terms. No order as to costs.

(ROHIT W. JOSHI, J.)

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