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IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 2764 OF 2014**

|                         |               |
|-------------------------|---------------|
| Bhanudas Hiranman Ghule | .. Petitioner |
| Vs.                     |               |
| Hanumant Pappana Fulare | .. Respondent |

Mr.Siddharth C.Wakankar, Advocate for the Petitioner.  
Mr.Vaibhav V.Ugle, Advocate for the Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : 22<sup>nd</sup> JULY, 2015**

**P.C. :**

. Heard Mr.Siddharth C.Wakankar, learned Counsel for the petitioner and Mr.Vaibhav V.Ugle, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant has challenged the judgment and order dated 05/05/2012 passed by the learned 36<sup>th</sup> Joint Civil Judge, Junior Division, Pune below Exhibit 5 in Regular Civil Suit No. 288 of 2012 as also the judgment and order dated 18/06/2013 passed by the learned District Judge – 10, Pune in Misc. Civil Appeal No. 233 of 2012. By these orders, the Courts below allowed the application filed by the respondent, hereinafter referred to as plaintiff for injunction restraining the petitioner, hereinafter referred to as defendant from raising construction over the disputed common wall till the disposal of the Suit.

3. In support of this Petition, Mr.Wakankar reiterated the submissions that were made before the Courts below. He submitted that basically, plaintiff did not establish that disputed wall is common between plaintiff and defendant. In fact, the predecessor of plaintiff-one Mr.Jagtap had no right over the disputed wall so as to transfer in favour of the plaintiff. He further submitted that plaintiff did not purchase the disputed wall along with the property. The plaintiff claims to have purchased the property by registered sale deed from one Mr.Jagtap. The defendant is not party to the sale deed and therefore, that sale deed is not binding on the defendant. He further submitted that no material is produced on record by the plaintiff to substantiate his case that the disputed wall is common between the plaintiff and the defendant.

4. On the other hand, Mr.Ugle supported the impugned orders. He submitted that after considering the material on record, the Courts below have concurrently recorded prima facie finding that disputed wall is common between the parties and if injunction is not issued, plaintiff will suffer irreparable loss and rights of the plaintiff will be infringed due to construction over the disputed wall.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The short question is whether disputed wall is common between the parties. On one hand, plaintiff claims that it is

a common wall and on the other, defendant claims that it is his exclusive property. The Courts below, after considering the material on record concurrently held that prima facie, the disputed wall is common between the plaintiff and defendant. The Courts below also considered that defendant is not party to the sale deed by which plaintiff purchased the property. It was further observed that when the plaintiff purchased the property in the year 2001 that time also the disputed wall existed and since then being used as a common wall. It was further held that contention of the defendant that disputed wall and area beneath it is exclusively owned by defendant is not substantiated by the material on record. It was further held that prima facie, defendant has not shown that he obtained sanction from the local body.

6. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders. It cannot be said that the orders passed by the Courts below are perverse and that the discretion exercised by the Courts below are either arbitrary, capricious or perverse. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Liberty is reserved to the parties to apply for expeditious disposal of the Suit.

**(R. G. KETKAR, J.)**