

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11295 OF 2015

Pratap Govind Kad

..Petitioner

Vs

Shri Rajendra Dashrath Walunj
and Ors

.. Respondents

Mr.Uday B.Nighot, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 19/11/2015

PC:

1. Heard Mr. Uday Nighot, learned counsel for the petitioner at length.
2. By this petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 7.11.2014 passed by the learned Jt. Civil Judge, Jr. Dn., Khed below Exhibit 47 in Regular Civil Suit No.126 of 2007 as also the Judgment and order dated 14.9.2015 passed by learned District Judge-1 in Misc. Civil appeal No.151 of 2014. By these orders, the Courts below rejected the application Exhibit-47 taken out by the plaintiff for injunction restraining the defendants from carrying out any construction in the suit property.
3. The Courts below have rejected the application on the ground that the Court Commissioner and Inspector of Land

records submitted reports. Both the reports show that construction of the suit wall is within the boundaries of property of the defendants. In fact, the plaintiff, without leaving any space, constructed hotel adjacent to compound wall of the defendants and outlet of water of the said hotel had been opened in the area of defendants.

4. Apart from the above reasons, in my opinion, the plaintiff is also not entitled to injunction as the suit is instituted in the year 2007 for perpetual injunction and the present application is taken out in the year 2014.

5. Mr Nighot submitted that the compound wall constructed by the defendants collapsed and thereafter he started construction of the compound wall in the plaintiff's property and, therefore, the plaintiff took out application for injunction in the year 2014. He has taken me through paragraph 11 of the trial Court's judgment and submitted that the said finding is illegal. He also took me through the Map at Exhibit-E at page 26 and submitted that fresh measurement be ordered.

6. It is not possible to accept these submissions, as after considering the material on record, the Courts below concurrently held that construction of the compound wall is not within the suit property and the defendants have carried out construction within his own property. 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.

(R.G.KETKAR, J.)