

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

**SECOND APPEAL NO.960 OF 2015
WITH
CIVIL APPLICATION NO.2063 OF 2015**

Jayant Madhukar Pethkar ... Appellant

Vs

Jamanlal Eknath Gujrathi

(Since Deceased)

through his legal heirs and Ors.

... Respondents

...

Mr. S.S.Kulkarni for the Appellant.

Mr. Milind M. Sathaye for the Respondent Nos.3 to 5.

CORAM : SANDEEP K. SHINDE J.

DATE : 1st APRIL, 2019

P.C. :

It is against the decree of prohibitory and mandatory injunction issued by the trial Court, the plaintiff has preferred this appeal.

2 Appellant/plaintiff had filed the suit for specific performance of the oral contract in respect of the Southern half portion of the property bearing City Survey No.4295 at Yevla District: Nashik. In the said suit, defendant preferred counter-claim and sought decree of prohibitory and mandatory injunction.

3 The learned trial Judge dismissed the suit and allowed
the counter-claim and restrained the plaintiff from creating
hindrances in constructing a wall spanning East-West by the
defendant on the ground and first floor of the suit property.

4 Decree of the trial Court is upheld in Regular Civil
Appeal No.13 of 2012 by the Appellate Court vide the judgment and
order dated 17th October, 2015. It is against the decree in the
Regular Civil Appeal No.13 of 2012, this appeal is preferred.

5 Heard the learned counsel for the parties.

6 Perused the notes of evidence, plaint, written statement,
counter-claim and the written statement of the plaintiff to the
counter-claim.

7 Both the Courts concurrently held that, plaintiff could
not prove and establish suit oral contract of which performance was
sought and answered this fact in issue accordingly. Mr. Jagdish Patni
who was examined as plaintiff's witness stated that Mr. Jamnalal
(Defendant No.1) was not present on 19th February, 1998 who
allegedly agreed to sell suit property to the plaintiff. Thus, the

finding rendered by both the Courts below is consistent with the evidence on record and thus, no interference is called for.

8 The only contention raised by the appellant is that, respondent/decreed holder while constructing the wall on the ground and first floor in terms of decree, may not construct it exactly in the centre of hall on ground and first floor of the property.

. Mr. Sathe the learned counsel for the respondents would submit that respondents shall apply to the executing Court for deputing its representatives to supervise construction of wall and to ensure that it is constructed in the centre of the hall on the ground floor of the suit property. Mr. Sathe further submits that before constructing the wall, due notice shall be served upon the appellant.

. In my view, submissions of Mr. Sathe would take care of apprehension of the appellant and would be in the interest of both the parties.

9 Appellant shall remove articles/goods, lying in the portion of the suit property, if any, on their own volition without compelling the respondents to apply for execution of the decree

passed in counter-claim.

10 Appeal, therefore, does not give rise to any substantial question of law. Appeal is, therefore, dismissed with no order as to costs.

11 Appellant has deposited cost as directed by this Court which the respondents are at liberty to withdraw if such application is made by them. Court shall grant the said application forthwith.

12 The appeal disposed of. Civil Application is disposed of accordingly.

(SANDEEP K. SHINDE, J.)