

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8026 OF 2021**

Nagappa Maruti Bhurugade .. Petitioner
Versus
Kedari Ramchandra Bhurugade .. Respondent

...
Mr.Umesh H. Pawar for the Petitioner.

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**CORAM: BHARATI DANGRE, J.
DATED : 26th NOVEMBER, 2021**

P.C:-

1. The petitioner is aggrieved by the order passed by the Appellate Court, thereby allowing the appeal and setting aside the order of the trial court below Exh.5.

2. Heard learned counsel for the petitioner, who is a plaintiff in R.C.S.No.64 of 2019. He instituted a suit for permanent injunction, thereby restraining the sole respondent from constructing a new wall and it is pleaded in the plaint that taking advantage of his absence from the premises, the defendant had demolished the existing wall and is in attempt to construct a new wall. It is also pleaded that when he was attempted to be restrained, he threatened the plaintiff.

3. The application for temporary injunction was filed and even the defendant filed his written statement. The factual

position which is stated in the written statement is to the effect that the wall is standing between the properties of the two parties, since last 20 to 25 years. Some portion of the wall had collapsed, making the entire wall unstable. The current scenario has also been set out by the defendant in the written statement.

4. The first court granted an injunction, recording that there is a prima facie case in favour of the plaintiff. However, the Appellate Court recorded the pleadings in the written statement to the effect that the wall has collapsed and it is dilapidated. The reference is also made to an earlier R.C.S.No.28 of 2004 instituted by the defendant against the plaintiff and his brother restraining them from obstructing the possession and the suit was decreed. The Appellate Court has recorded a prima facie finding to the effect that there was already a common wall between the parties and the plaintiff and the defendant had equal right of user of the said partitioned wall. The existing wall was old and required a modern construction to suit the requirements of the occupiers is the stand of the defendant. Since it is not the case of the plaintiff that the defendant is making an encroachment on his property or any loss would be caused if such a wall is constructed and it being constructed at the expenses of the defendant, recording that there is no prima facie case of any hardship which has been established by the plaintiff, the appeal has been allowed.

5. In the wake of the pleadings in the plaint and the written statement, the observations made by the Appellate Court cannot be said to be perverse and they are based on the pleadings itself. Since the plaintiff has failed to make out the prima facie case, considering the parameters for grant of injunction and the wall was already in existence since last 20 to 22 years, the Appellate Court was perfectly justified in disturbing the order of the first Court. The impugned order is upheld. Resultantly, the writ petition is dismissed.

6. Needless to state that since the defendant is merely replacing the existing wall, while bringing up the new structure, the placement of the said wall and the existing dimensions should be watched out and shall not be subjected to change so that there is no allegation of encroaching upon the land belonging to the plaintiff.

(SMT. BHARATI DANGRE, J.)