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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 12587 OF 2024
IN
SECOND APPEAL ST NO. 22473 OF 2024**

Dilip Bapu Patil and anr

.....Applicants

Vs.

Prabhakar Jagannath Phatak Decd.
Thr. LRs

.....Respondents

Mr. Pradeep D. Dalvi for the applicants

CORAM : GAURI GODSE, J.

DATE : 17th DECEMBER 2024.

ORDER:

1. This application is for condonation of delay of 26 days in filing the application.
2. I have heard the learned counsel for the appellant on the merits of the second appeal. This second appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees dismissing his suit for declaration that the suit wall is exclusively owned by the plaintiff and for injunction restraining defendant no. 1 from carrying out any

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construction changing the nature of the suit wall.

3. Learned counsel for the appellant submits that defendant no. 1 though filed a written statement, failed to lead any evidence in support of his contentions. He submits that in the absence of any supporting evidence, both the Courts erred in accepting defendant no. 1's contention in the written statement that the suit wall was jointly owned by the parties. He therefore, submits that the second appeal would require consideration on the findings recorded by both the Courts in favour of defendant no. 1 in the absence of any supporting evidence.

4. I have perused the impugned judgments. Both the Courts have relied upon the Court Commissioner's report and the map which indicates that the suit wall does not exclusively stand on the plaintiff's property. Both the Courts after considering the evidence on record and the Court Commissioner's report alongwith the map at Exhibit 40 have recorded concurrent finding on fact that the suit wall is a common wall belonging to the plaintiff and defendant no. 1. Both the Courts have also referred to the original city survey map at Exhibit 101 which shows a single line of wall between the houses of plaintiff and defendant no. 1. The plaintiff failed to produce any evidence to indicate

exclusive ownership of the plaintiff on the suit wall. I do not find any illegality or perversity in the findings recorded by both the Courts based on the original city survey number at Exhibit 101 and the Court Commissioner's report alongwith Exhibit 40.

5. The second appeal does not raise any question of law. In view of the aforesaid, I do not find it necessary to issue notice to the respondent in the application for condonation of delay. Hence, in the facts and circumstances of the case, delay is condoned and the application is allowed in terms of prayer clause (a).

6. The second appeal does not raise any question of law. Hence, for the reasons recorded above, the second appeal is dismissed.

[GAURI GODSE, J.]