



ORDER BELOW EXH.1 IN R.D.No. 16/2016.

01. This application is filed by the J.D. for restraining D.H. from making encroachment by removing common wall.

02. It is submitted by the J.D. that, since 10/11/2019 the D.H. started the work of demolishing the common wall by making encroachment. The slap of his house is based upon said common wall. Hence, he his work be stopped. He further contended that, if injunction order is not passed, he will suffer from irreparable loss.

02. D.H. filed say vide Exh. 35 and resisted the contents of this application. He submitted that, J.D. himself set the tin by making encroachment over his land and due to the water fall from said tin, there was damage to the common wall. Therefore, in order to avoid in danger, he started the construction of new wall in his property. Hence, he prayed for rejection of this application.

03. Perused the record and say filed thereon. Studied Order 39 Rule 1 and 2 of Code of Civil Procedure as well as Section 38 of the Specific Relief Act. This injunction application is filed in execution proceeding by mentioning new cause of action. Therefore, this application for injunction itself is not tenable in the present execution petition. Further, this application is not

supported by the affidavit. There is no evidence on record to show that, the plaintiff started encroachment by damaging common wall or by making encroachment. Therefore, the injunction as prayed by the J.D. is not tenable the present execution petition which is based upon compromise decree. Hence, this application is liable to be rejected. Hence, the following order is passed.

ORDER

1. This application is hereby rejected.
2. Costs in cause.

Kagal.
Date:- 21/12/2019

(V. H. Khedkar)
Civil Judge Jr. Dn., Kagal.