

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

17. SA/236/2012 With CA/4106/2012 In SA/236/2012

CHANDU BABU PACHARNE
V/S
BHIMA BABU PACHARNE

Mr. R.R. Karpe h/f. Mr. Sandeep S. Deshmukh, Advocate for
appellant.

CORAM : T.V. NALAWADE, J.
DATED : 21st September, 2015.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Suit No. 481/2004, which was pending in the Court of Civil Judge, Junior Division, Ahmednagar and also against the judgment and order of Regular Civil Appeal No. 227/2007, which was pending in the Court of District Judge-7, Ahmednagar. The suit filed by present appellant for relief of declaration and permanent injunction is dismissed. Heard the learned counsel for appellant.

2. The suit was filed against respondent, real brother of appellant in respect of one well situated in portion of land Gat No. 52/1B. It is the case of plaintiff that this land is divided in two portions between plaintiff and defendant and each got 68 R. portion during partition. It is contended that in the portion given

to defendant, there was well in existence and that well was kept common between plaintiff and defendant. It is contended that as there was no sufficient water in the well, plaintiff and defendant together spent Rs. 80,000/- for increasing depth of the well. It is contended that the well had then sufficient water and both of them started taking equal share of water. It is contended that the defendant then created some false record to show that he had taken that well from one Zilla Parishad scheme like Jawahar Yojna and he got entered his name as owner in respect of the well. Since then defendant is preventing plaintiff from taking water of the well and so, the cause of action took place. The relief of declaration was claimed that plaintiff has 1/2 share in the well and the relief of injunction was claimed to prevent the defendant from causing obstruction in exercising the right by the plaintiff.

3. The defendant contested the matter by filing written statement. He contended that there was no well in the past and he took the well under scheme of the Government. It is contended by him that plaintiff did not contribute anything when the well was taken and there was no question of allowing plaintiff to take water from this well. It is contended that as the well has now sufficient water, the plaintiff has filed the suit by

making false contention for taking water from the well.

4. Both the sides gave evidence. Both the Courts below have held that plaintiff has failed to prove that in the past, there was well in existence and the well was kept in common. Both the Courts below have held that plaintiff has failed to prove that he spend amount for digging the well.

5. This Court has carefully gone through the reasoning given by the Courts below. In the pleadings itself, the plaintiff has admitted that the disputed well is present in the portion, which is given to the share of defendant. Even if it is presumed that there was well in existence in the past, it was necessary for the plaintiff to show by convincing evidence that at the time of partition the well was kept common. In such a case, the parties would have created some document, but there is no such document in existence. In any case, in the revenue record, at no time, such well was shown prior to the date of partition. On the contrary, the plaintiff has admitted that after the partition, when the defendant did the construction by using the benefit given under the Government scheme, the well was shown in the revenue record and that is shown in the portion of defendant.

6. Though the plaintiff examined some witnesses who have tried to say that they were engaged for construction of the well, in view of the aforesaid circumstances, the Courts have not believed this oral evidence. Some receipts were also shown of making payment of wages. But the Courts below have refused to place reliance on those receipts. In view of the aforesaid circumstances and as the dispute is decided on question of facts and there are concurrent findings, this Court holds that no substantial question of law as such is involved in the matter.

7. In the result, the appeal stands dismissed. Civil application is disposed of.

[T.V. NALAWADE, J.]

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