

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.170 OF 2014
KHUTBUDDIN NABI CHOUGULE & ORS.)...APPELLANTS

V/s.

ALLAUDIN NABI CHOUGULE (deceased))
SMT.KHAIRUN ALLAUDDIN CHOUGULE)
AND OTHERS)...RESPONDENTS

* * * * *

Mr. Pradeep Patole h/f. Mr.S.S.Patwardhan, Advocate for the Appellants.

Mr. P.D. Dalvi, Advocate for Respondent Nos.1 to 8.

Coram: Smt.R.P.SondurBaldota, J.

Date : 27th January, 2015.

P.C. :

1). This Second Appeal is directed against the concurrent findings of the courts below holding that the respondents have an equal share in drawing water from the pipeline installed by the father of the parties in the year 1971 and the electricity connection thereto. On this finding, the trial court decreed the suit. The lower Appellate court upheld the decree by this it's judgment and order dated 30th

November, 2013.

2 The original plaintiff and the appellants are the brothers. They have three more brothers who are not parties to the suit. The appellants are the original defendants. On the death of the original plaintiff, the respondents have been brought on record as his heirs and legal representatives. The father of the parties, by the document dated 17th March, 1972, had partitioned the joint properties amongst his children. In the partition, the land at Gat No.1079, 1137 and 1139 came to the share of the original plaintiff. The father had, in the year 1971, laid down a water pipeline for the benefit of all the joint properties, and had also installed electricity connection for pump for distribution of the water. All the parties, i.e. the original plaintiff and his brothers, had been enjoying 1/6th share in the water supply to their respective lands. In the year 1996, when original defendant no.1 lost certain court proceedings, he became upset and started obstructing the enjoyment of the water facility by the original plaintiff. He started denying that the water pipeline was installed by the father and claimed that he had himself got the pipeline laid at his personal expenses. The trial court, on appreciation of the evidence before it, held that, the water pipeline was installed by the father in the year 1971, and as such, all the children including the original plaintiff, had an equal share in the

water supply. It also held that, the defendants had been obstructing the original plaintiff from enjoyment of the water facility, and decreed the suit. Being aggrieved by the judgment and decree, the original defendants preferred appeal to the District court. By the order dated 30th November, 2013, the District court confirmed the findings of the trial court and dismissed the appeal.

3 Mr. Patwardhan, the learned advocate for the appellant-original defendants, submits that, the claim of the original plaintiff of equal share in the water pipeline could not have been accepted by the courts below. It is his argument that, had there been any sharing of water, the same would have been reflected in the Deed of Partition dated 17th March, 1972. Since the father had, during his life time, been careful enough to partition all the joint properties, with an intention to avoid any dispute amongst his children after his death if at all there was sharing of water, he would certainly have included the same in the deed. He argues that, absence of inclusion of sharing of water in the deed, is a strong circumstance indicating that the water was not to be shared. I find no substance in the argument. Merely because sharing of water has not been included in the Deed of Partition, it cannot be inferred that water facility was not common. The Courts below have,

on appreciation of the evidence led by the parties, held that the installation of the water pipeline was by the father of the parties, and not by the original plaintiff. As such, the same is to be shared by all the heirs. The concurrent findings are supported by the evidence on record. There is no substantial question of law arising for consideration of the court. The Second Appeal is, therefore, dismissed.

(Smt. R.P. SondurBaldota, J)