

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 296 OF 2015
WITH
CIVIL APPLICATION NO.663 OF 2015**

1. Shri Sanjay Jagannath
Chandgude and Anr. ..Appellants

Vs

1. Shri Chandrakant Hanumant
Chandgude and Anr. .. Respondents

Ms.Pratibha Shelke i/b Mr.Ramdas P. Hakke, Advocate for
Appellants.

CORAM : R.G.KETKAR,J.
DATE : 18/04/2015

PC:

1. Heard Ms. Pratibha Shelke, learned counsel for the appellants at length.
2. By this Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the original defendants have challenged the Judgment and decree dated 29.7.2010 passed by the learned 6th Jt. Civil Judge, Jr.Dn., Baramati in Regular Civil Suit No. 148 of 2007 as also the Judgment and decree dated 21.1.2015 passed by the learned Adhoc District Judge-2, Baramati in Civil Appeal No.91 of 2010. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs', and declared that the plaintiffs and the appellants, hereinafter referred to as 'defendants', have equal right to take water

from the well, situate in Gat No.296/1 at village Pansare Wadi, Taluka Baramati, District-Pune. Parties have right to take water of two days each from the suit well by rotation within span of eight day. The defendants are perpetually restrained from obstructing the plaintiffs from taking water of the suit well by rotation as per their respective rights.

3. In support of this Appeal, Ms Shelke contended that there is no documentary evidence to substantiate the case of the plaintiffs that the plaintiffs and the defendants have commonly dug the suit well. She further submitted that during pendency of the suit, the Court Commissioner was appointed. The defendants have specifically objected to the Court Commissioner's report by filing application under Order XXVI Rule 9 of C.P.C. (Exh.44) praying for appointment of Court commission for local inspection. She further submitted that in the year 1977 there was partition between the parties. (defendants are cousins of the plaintiffs). In view thereof, there is no question of well situate in Gat no.296/1 being common between the parties. She has taken me through the report of the Court Commissioner as also application Exh.44 made by the defendants and order passed thereon. She has also invited my attention to relevant discussion in the judgment of the learned District Judge. She submitted that Appeal requires consideration as it raises substantial

questions of law. The Courts below have erroneously decreed the suit in the absence of any evidence in support of the plaintiffs' case.

4. I have considered the submissions advanced by Mr Shelke. I have also perused the material on record. The short question is whether the well in Gat No.296/1 is commonly dug by the parties. The Courts below, after appreciating the evidence on record, have concurrently held that the plaintiffs have established the said fact. In particular, the learned District Judge in paragraph 15 noted that during the evidence of the plaintiff, suggestion was given by the defendant's Advocate that the pipeline laid from the well to the land of the plaintiffs is without the knowledge of the defendants. This suggestion clearly indicates that there is a pipeline from the disputed well to the land of the plaintiffs land bearing Gat no.296/2. The learned District Judge also considered the Court Commissioner's report Exh.23 which also indicated that the pipeline was laid from the suit well to the land of the plaintiffs and there are three valves in the field of the plaintiffs.

5. After considering the evidence of PW 2 Laxman Chandgude as also the evidence of DW 1, the learned District Judge noted in paragraph 18 that in his cross examination, DW 1 stated that he does not know whether two valves of the pipeline laid from the disputed well are opening in the land of

the plaintiffs. The learned District Judge commented on this aspect to the effect that the defendants have not denied the suggestion but gave evasive answer. He was expected to know that there is a pipeline laid from the disputed well to the land of the plaintiffs but still he gave evasive answer. The conduct of the defendants supports the Court commissioner's report Exh.23 as well as evidence of PW 2 Laxman Chandgude. In paragraph 19, the learned District Judge also noted that it has not come on record that there is any other source of water to the land of the plaintiffs. After going through the oral and documentary evidence placed on record by the parties, the learned District Judge confirmed the trial Court's decree.

6. Thus, the findings recorded by the Courts below are based upon appreciation of evidence on record. It cannot be said that the findings are perverse being based upon no evidence or that they are contrary to the evidence on record. In view thereof, no substantial question of law arises in this Appeal. Hence, Appeal fails and the same is dismissed. In view of dismissal of the Appeal, Civil Application No.663 of 2015 for stay does not survive and the same is disposed of.

(R.G.KETKAR, J.)