

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.677 OF 2013
WITH
CIVIL APPLICATION NO.1519 OF 2011**

Shri. Baba Raghu Ladkat & Ors. Appellants

Vs.

Shri. Raghunath Rakhmaji Inamake Respondents
& Ors.

Mr. Umesh Mankapure i/by Mr. A.P. Kulkarni, Advocate for the Appellants.

Mr. Tushar Sonawane, i/by Mr. Prashant Hagare, Advocate for Respondents No. 1 to 6.

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

Date : 13th March, 2015.

P.C.

1 The appellants herein are original defendants no.1 to 6, 15, 16, 18 and 19 to Regular Civil Suit No.196 of 2003. They challenge the concurrent findings of facts by the courts below. The appeal is opposed by respondents no.1 to 4, the original plaintiffs.

2 The plaintiffs filed the suit herein for a declaration that they have 1/4th share in the water from the well situate in Gat No.275,

village Sherewadi, Taluka Baramati, District Pune. The trial court, by its judgment and decree dtd. 18th December, 2008 decreed the suit. Being aggrieved by the decree, the appellants herein preferred Regular Civil Appeal No.36 of 2009 to the District Court. The appeal came to be dismissed by the judgment and order dtd. 25th October, 2010.

3 Respondents no.1 to 4 had not produced the document of sale-deed dtd. 24th May, 1943, by which their father had purchased a portion of the land at Survey No.110. According to them, this document of sale-deed had provided for a right to 1/4th share in the water from the well, situate at CTS No.111. The trial court held that though respondents no.1 to 4 had not produced the document of sale-deed, by which they had become the owners of the property in question or even an authentic copy thereof, the appellants herein and the other respondents had not denied the fact of respondents no.1 to 4 being owners in respect of the property in question. It further noted that defendants no.15, one of the appellants herein had not specifically denied the right of respondents no.1 to 4 to take water from the well. Therefore, non-production of the document made no difference. The trial court then recorded the admitted facts i.e. the land at CTS No.110 was divided into two Gat Nos., out of which, Gat No.276 is in possession of respondents no.1 to 4 and defendants no.15 and 16. Gat No.275 is in possession of defendants no.1 to 6. Further, there is well situate in the land at Gat No.275. Therefore, according to the trial court, the only question to be considered was whether there was a well

in CTS No.110 when the father of respondents no.1 to 4 had purchased a portion of it. The trial court found that the lease-deed (Exhibit 66) produced by the appellants themselves established existence of the well in land at CTS No.110 and the deposition of respondent no.2 coupled with the clauses in the lease-deed established that the father of respondents no.1 to 4 had purchased the right to take water from the suit well.

4 The District Court while deciding the appeal and confirming the order of the trial court had exhibited the document of copy of the sale-deed produced by respondents no.1 to 4. It has extensively referred to clauses under the sale-deed to confirm the decree of the trial court.

5 Mr. Mankapure, the learned advocate for the appellant submits that the trial court had erred in decreeing the suit in the absence of the material piece of evidence of the document of lease-deed, based on which respondents no.1 to 4 had filed their suit. He submits that the appellate court also committed an error in exhibiting the document of sale-deed without there being any proof produced by respondents no.1 to 4.

6 There can be no substance in the challenge to production of the sale-deed by respondents no.1 to 4 and its admission in evidence by the appellate court, because the appellants' have not

challenged title of respondents no.1 to 4 to their property. This title being derived from the document of the sale-deed, there could be no objection to the production of the document and its admission in evidence. The courts below have correctly appreciated the dispute between the parties and issues arising therefrom. There is no substantial question of law arising for consideration of this court. Hence, the Second Appeal is dismissed.

7 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)