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

***SECOND APPEAL NO.147 OF 2015  
WITH  
CIVIL APPLICATION NO.289 OF 2015  
IN  
SECOND APPEAL NO.147 OF 2015***

Sadashiv Maruti Chavan,  
Age 58 years, Occ:Agriculture,  
R/o. Surur, Tal. Wai, Dist. Satara

...Appellant  
(Org. Deft No.2)

Versus

1. Santram Mahadeo Gaikwad,  
Age 70 yearsw, Occ : Nil,  
through Power of Attorney  
Mrs. Sunanda Santram Gaikwad,  
Age 65 years, Occ.: Agriculture  
and household, R/o. Surur, Tal.Wai,  
Dist. Satara.

2. Dnyandeo Vitthal Chavan.  
Age 65 years, Occ.: Agriculture,  
Both R/o. Surur, Tal. Wai, Dist.Satara

...Respondents  
(No.1 Org. Plff & No.2 Org.  
Deft No.1)

Mr. M. N.Dhamal, for the Appellant.

Mr. D. D.Rananaware, for the Respondent No.1.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 9<sup>th</sup> OCTOBER, 2017***

**ORAL ORDER :**

1. Heard learned Counsel for the parties.
2. By this appeal preferred under Section 100 of the Civil Procedure Code, the appellant has impugned the Judgment and Decree dated 25<sup>th</sup> September, 2014, passed by the learned Principal District Judge, Satara, in Regular Civil Appeal No.73 of 2009, preferred by the respondent no.1, challenging the Judgment and Order dated 24<sup>th</sup> November, 2008, passed by the learned Civil Judge, Junior Division, Wai in Regular Civil Suit No.47 of 1996. For the sake of convenience the parties will be referred to as 'plaintiff' and 'defendants', as it appears in the original proceedings. The appellant is the original defendant no.2 and the respondent no.1 is the original plaintiff.
3. The plaintiff had filed a suit in the Court of the learned Civil Judge, Junior Division, Wai, seeking declaration that he is the owner of 8 pie share in the well, in land Gat No.1003 of village Surur, Taluka-Wai,

District-Satara and had also sought a declaration that the Exchange Deed dated 21<sup>st</sup> August, 1993 (Exhibit-126), be declared as illegal and the same be cancelled and for a further consequential declaration that the Sale Deed dated 18<sup>th</sup> January, 1995 executed by the defendant no.1 in favour of the defendant no.2 in respect of Gat No.1003 to the extent of his 8 pie share also be declared as illegal. The defendants i.e. the appellant and the respondent no.2 contested the suit by filing their joint written statement. The plaintiff and the defendants examined their respective witnesses. After considering the oral as well as the documentary evidence on record, the learned Civil Judge, Junior Division, Wai, vide Judgment and Order dated 14<sup>th</sup> November, 2008, dismissed Regular Civil Suit No.47 of 1996.

4. Being aggrieved by the said Judgment and Order of the trial Court, the plaintiff preferred an appeal before the District Court, Satara being Regular Civil Appeal No.73 of 2009. The learned Appellate Court after considering the material on record and after hearing the parties was pleased to allow the said appeal vide Judgment and Order dated 25<sup>th</sup> September, 2014 and as such was pleased to set aside the impugned Judgment and Order of the trial Court. The learned District Judge decreed

the suit and declared that the Exchange Deed (Exhibit-126) was null and void; that the plaintiff is the owner of 8 pie share in the well in the suit land bearing Gat No.1003 of village Surur, Taluka-Wai, District-Satara and directed the defendant no.2 to deliver such right to the plaintiff and further perpetually restrained the defendant No.2 from obstructing, either personally or thorough his agent, servants etc. The defendants were also directed to pay costs to the plaintiff throughout and bear their own.

5. Learned Counsel for the Appellant (original defendant No.2) submitted that the impugned Judgment and Order was perverse and that the Appellate Court had failed to appreciate the material on record, in its proper perspective. He submitted that the 7/12 extracts clearly showed the existence of a well in Gat No.976 and that the trial Court had rightly come to the conclusion, that there was a well in existence, in Gat No.976 and as such, the said findings ought not to have been disturbed by the appellate Court.

6. The only question that falls for consideration in this appeal, is whether there was a well in existence in Gat No.976 and whether the

Exchange Deed (Exhibit-126) was executed by the Defendant No.2 by practicing fraud on the plaintiff (Respondent No.1) and whether the Judgment and Decree passed by the Appellate Court is perverse.

7. The plaintiff had filed the suit, essentially on the premise that the defendant No. 2 had entered into an Exchange Deed with him, despite the fact, that the defendant no.2 was aware that there was no well in existence, in his land i.e. Gat No.976. According to the plaintiff, due to the fraudulent misrepresentation made by the defendant no.2, the Exchange Deed was null and void. Some of the revenue records, no doubt shows the existence of a well in Gat No.976, however, as rightly observed by the Appellate Court, the said entries show, that it was only for a few years that the said entry appeared in the 7/12 extract. The 7/12 extract for the year 1966-1967, 1967-1968 and 1970-1971 to 1978-1979 and 1996-1997 to 1999-2000 clearly showed that there was no such entry i.e. with regard to existence of a well in Gat No.976. The Appellate Court has rightly observed that there are sporadic entries for a few years regarding existence of well in Gat No.976, but the 7/12 extract for a majority of the period does not show the existence of a well in Gat No.976. It also appears, that

subsequently the entry with respect to the well, were rectified, and that the subsequent entries showed that there was no well in existence in Gat No.976. It appears that the said fact, had gone unnoticed and was not properly considered by the trial Court, as a result of which the trial Court opined that the revenue records were in favour of the defendants, when in reality, it was otherwise. It also appears that a Court Commissioner was appointed to inspect the suit property as well as Gat No.976, to report the existence of a well in the said land. Accordingly, PW.3-Vishnu Phadtare was examined by the plaintiff. The Court Commissioner's report clearly showed that there was no well in existence in Gat No.976. PW.4-Subhash Chavan, an employee of MSEB was also examined by the plaintiff. PW.4-Subhash, after going through the record of his office, has categorically deposed that no electricity connection for a pump for any well was provided to land, being Gat No.976 of Surur, which is defendants property. PW.4-Subhash produced a copy of the said letter (Exhibit – 92) bearing the signature of Sub-Engineer-Ingale, addressed to Deputy Engineer, MSEB Sub Division, Wai, dated 2<sup>nd</sup> February, 2005, informing that there was no well in existence in Gat No.976 and that there was no electricity connection provided to any pump in that land.

8. The defendant No.2 for the first time, without any pleading, either in the written statement, additional written statements or even any statement made by himself, later came out with a case, that there was a well in existence in Gat No.976 but was filled up with debris, about 5 years, prior to their deposition. The defendant's witnesses i.e. owners of the adjacent land for the first time had stated that there was a well in Gat No. 976, which was subsequently filled up with debris. It is pertinent to note, that there is no foundation to the said case, either in the written statement/defendants' evidence/cross of the plaintiff and was put up subsequently, when the defendant No.2 examined his witnesses, in 2006, making the defendant's case highly unreliable and doubtful. The Appellate Court has in detail re-appreciated and considered the material on record. There is no perversity in the findings recorded by the appellate Court.

9. Considering the aforesaid, there is no substantial question of law involved in the aforesaid appeal. Accordingly, the appeal is dismissed. No order as to costs.

10. In view of the aforesaid, Civil Application No.289 of 2015 does not survive and the same is also disposed of.

***(REVATI MOHITE DERE, J.)***