

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7578 OF 2014***

Rajaram Babaji Jadhav
(since deceased through his legal heirs
Hirabai Rajaram Jadhav & Ors. Petitioners
Versus
Dada Bahiru Jadhav & Ors. ...Respondents

Mr. Kuldeep U.Nikam,for the Petitioners.
Mr.Arun H. Palekar,for the Respondent Nos. 1 to 3.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 14th November, 2017.***

P.C. :

1. Rule. Rule made returnable forthwith with consent of the parties.
2. The present petitioner happens to be the original plaintiff in Suit No.374 of 2001. By a judgment dated 17.7.2010, the suit was dismissed. Consequently, all interim protections were also vacated.
3. Being aggrieved by the said judgment and decree, the present petitioner filed Regular Civil Appeal No.544 of 2010. That the present petitioner, during the pendency of the appeal, had filed Misc. Applications

below Exhibit 6 and Exhibit 14 seeking an injunction against the respondents. However, the said applications were not taken to its logical end and were withdrawn without assigning any special reasons or without taking an opportunity to file a subsequent application, if necessary. That the petitioner had filed an application below Exhibit 28 again under Order XXXIX Rules 1 and 2 of C.P.C. seeking the relief that the respondents be restrained from installing an electric meter on the suit well. It was also demonstrated that they had filed an application seeking a connection from MSEB. The application was contested on merits. The learned appellate Court had observed that in the said suit, the respondents had filed a counter-claim which was allowed. The suit was filed for the relief of declaration and injunction and seeking restraintment of the respondent from drawing water from the well situated on the land Gat No.1691 and the said claim was rejected in the final judgment and decree. The learned appellate Court has observed that the applications below Exhibits 6 and 14 were filed for the same purpose and although at the relevant stage, they were withdrawn and, therefore, it would not be appropriate to hear an application for the same cause on the third occasion. In view of this, the application below Exhibit 28 was rejected.

4. It appears from the records that the appeal is of the year 2010. The purpose would be served in the eventuality that the hearing of the appeal is expedited. Hence, this Court does not find any reason to interfere with the reasons assigned by the appellate Court in rejecting the application vide order dated 3.6.2014.

5. The Petition is dismissed. Rule is discharged.

However, the learned District Judge, Vaduj, is hereby requested to make an endeavour to conclude the hearing of the appeal by 28.2.2018.

5. The parties present shall continue the arrangement which they had followed since 2010 till the decision of the appeal.

(SMT.SADHANA S.JADHAV,J.)