

**SECOND APPEAL NO. 210 OF 2016**

WITH

CIVIL APPLICATION NO. 388 OF 2016

IN

**SECOND APPEAL NO. 210 OF 2016**

**Dattatray Narayan Kalekar & Anr. ...Appellants**

## Versus

**Amin Ashakalli Naikawade & Anr. ...Respondents**

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Mr. P.R. Arjunwadkar, a/w Ms. Prabha Badadare, for the Appellants.

Mr. Milind Deshmukh, for the Respondents No. 1 and 2.

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**CORAM : N.M. JAMDAR, J.**

**DATE : 6 April 2017**

**ORAL ORDER :**

1. By this Appeal, the Appellants have challenged the judgment and order passed by the learned District Judge, Gadhinglaj, District Kolhapur dated 23 June 2015. By the impugned judgment and order, the learned District Judge

allowed the Regular Civil Appeal No. 9 of 2007 filed by the Respondents-Plaintiffs and granted a decree of permanent injunction against the Appellants.

2. The Respondents filed a Regular Civil Suit bearing No. 4 of 2000 in the Court of Civil Judge, Junior Division, Ajara. It was the case of the Respondents that the Respondents were in possession and ownership of the suit property which consisted of a Well and since the Appellants were interfering with the possession of the Respondent over the suit well and was trying to draw water, an injunction needed to be granted. The Respondents also sought a declaration, however, since sufficient Court fees were not paid, the relief of declaration was dropped. The learned Civil Judge by judgment and order dated 19 November 2005 dismissed the Suit holding that the Respondents did not prove their lawful possession of the suit property. The learned District Judge held that the Respondents were entitled for relief of injunction having established that they were in lawful possession.

3. The disputes centers around the right to the Well in question. The learned Counsel for the Appellants submitted that without a prayer for declaration, the relief of injunction should not have been granted. He submitted that objection to the title was taken by the Appellants in the Written Statement. The learned Counsel submitted that when the adjoining land was

purchased by the Appellants, the Appellants succeeded to all the rights of his vendor which included the easementary right to draw water from the suit well. The learned Counsel submitted that the Trial Court had rightly considered this issue and had refused to grant an order of injunction. The learned Counsel for the Respondents on the other hand, submitted that the Appellants did not file any suit either for easementary rights or to set aside the Sale Deed in favour of the Respondents.

4. It is settled that under Section 100 of the Code of Civil Procedure, 1908, it is not possible to re-appreciate the evidence unless the findings of fact is perverse. As far as the possession of the Respondents is concerned, the Respondents had produced and relied upon the Sale Deed dated 22 July 1977. This deed specifically refer to the Well in question and states that the land in which the well is situated and states that all the ownership rights of the Well have been sold to the Respondents. If the purchaser of the Appellants was entitled to or had any right to draw water from the Well, the purchaser of the Appellants taken steps to get that right established. Till date neither the purchaser of the Appellants nor the Appellants themselves have filed any suit seeking easementary rights in respect of the Well. As far as the Sale Deed in favour of the Appellants is concerned, it does not specifically refer to any such easementary right to draw well. In fact, the well has been referred in the Sale Deed as being in dispute.

5. Rights of both the parties are governed by the documents, that is the Sale Deeds. Absence of clear recital in the Sale Deed of the Appellants and presence of specific recital in the Sale Deed regarding ownership shows that the conclusion reached by the learned District Judge that the Respondents had exclusive right in respect of the Well is a possible view. In view of the position of the documentary evidence itself, the findings of fact recorded by the learned District Judge cannot be interfered.

6. As regards the contention of the giving up of the relief of declaration is concerned, from the documents placed on record itself, it can be seen that the Appellants were in lawful possession of the suit property. It is not the case of the Appellants, even in the arguments in this Court, that the Appellants are the owners of the said well. What is sought to be contended is that the Appellants have easementary rights. Therefore, it was not necessary for the Respondents to seek declaration of ownership.

7. In these circumstances, no question of law arises. Second Appeal is dismissed.

**[N.M. JAMDAR, J.]**