

Amk

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

WRIT PETITION NO. 341 OF 2015

Sukhdeo Karbhari Gite & Ors. .. Petitioners
Vs.
Bhausahab B. Deshmukh & Ors. .. Respondents

Mr. Shivshankar D. Patil i/b Ms. Deeplaxmi S. Matwankar for the
Petitioners.
Ms. Vrushali Raje i/b Mr. Pramod N. Joshi for Respondent Nos.1 & 2.

CORAM : SMT. SADHANA. S. JADHAV, J.
DATE : 15th NOVEMBER, 2017.

P. C. :

1. Heard.
2. Rule. Rule made returnable forthwith with the consent of the parties.
3. The present petitioners happen to be original defendants in Regular Civil Suit No. 79 of 2013 pending before the Civil Judge, Junior Division, Sinnar. The dispute in question was of a common well which was shown in land Gat No. 305. Gat No. 305 was divided into Gat Nos. 305/1 and 305/2. The petitioners happen to be the purchasers of portion of Gat No. 305/2/1 whereas the plaintiffs had purchased Gat No. 305/1/1. In the original sale deed of Gat No. 305 by which the said Gat number was divided into two portions. There was mention of a common well which was standing in the share of the petitioners. It was specifically stated in the sale deed that the previous owner of the plaintiffs would have right to draw

water from the common well which was situated in Gat No. 305. Subsequently the erstwhile owner of Gat No. 305/1 had divided his land into two pieces and had sold the shares to the plaintiffs. It was the case of the plaintiffs that the defendants herein were restraining the plaintiffs to draw the water from the common well and therefore a suit was instituted for injunction. It is the contention of the petitioners that, in fact, he had permitted the erstwhile purchasers as well as the plaintiffs to draw the water from the common well for the purpose of drinking water as well as for the cattle. However, according to the petitioners, he had dug a separate well in land Gat No. 305/2/1 and according to the petitioners, the said subsequent purchasers were drawing water from the well which was in their portion in Gat No.305. The plaintiffs filed application below Exhibit 5 under Order 39 Rules 1 and 2. The learned Court had considered the issue that recitals of the sale deed dated 09.03.1978 there was reference of common well in the said sale deed and Ramchandra Rajaram Zambare happens to be the sole owner of Gat No. 305/2/1 had sold his share in favour of the plaintiffs. The Trial Court had considered the 7/12 extracts of the respective years and had held that mere recitals of taking half shares in well water is not sufficient to entitle the plaintiffs to seek injunction and rejected the application vide order dated 20.04.2013. Being aggrieved by the same, the plaintiffs had filed Misc. Appeal No. 71 of 2013 and the Appellate Court vide order dated 29.11.2014 has allowed the appeal filed by the original plaintiffs. Hence, this writ petition.

4. Upon perusal of the revenue records and after considering the submissions of the parties, it is clear that the defendants had not obstructed and would not obstruct the plaintiffs from drawing water from the common well which existed at the time of purchase. However, the plaintiffs cannot claim any rights to draw the water from the well which is separately dug by the defendants in land Gat No. 305/2/1. The learned counsel for the petitioners has also fairly submitted that he would not object the plaintiffs from drawing water from the common well which was in existence at the time of the sale deed. With these observations, it is clear that the issues between the plaintiffs and the defendants would stand clarified. The learned counsel for the respondents has submitted that the suit has proceeded considerably and has reached the stage of final hearing and therefore in order below Exhibit 5 would not be relevant at the time of final hearing and the suit shall be decided on its own merits. The position stands clarified. Rule is made absolute. The petition is allowed in the above terms in view of the clarification given above.

5. The petition is disposed of accordingly.

6. The learned Civil Judge, Junior Division shall not be influenced by the observations made hereinabove as they are restricted to an order passed below Exhibit 5.

[SMT. SADHANA S. JADHAV, J.]