

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.244 of 2014
(Himmat Shankarrao Janoskar v. Ukandrao Bhujangrao Pawar and others)

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders
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Shri P.R. Agrawal, Advocate for Appellant.
Shri P.M. Shukla, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Date : 4th January, 2017

Both the Courts below are concurrent in passing a decree of permanent injunction restraining the defendant from obstructing the plaintiffs from taking water from the well situated in Gat no.183.

Shri Agrawal, the learned counsel appearing for the appellant, submits that the substantial question of law involved in this matter is that the easementary rights of the plaintiffs stood extinguished by non-enjoyment for continuous period of sixty years, as contemplated by Section 47 of the Easements Act, 1882. Inviting my attention to the portion of the written statement to point out the pleading, Shri Agrawal submits that the defendant has deposed that the plaintiffs had not been using the easementary rights since last sixty years.

The burden in respect of claim under Section 47 of the Easements Act regarding extinction by non-enjoyment is upon the defendant. If that is not established, the defendant would fail. Perusal of the pleading pointed out by Shri Agrawal, does not indicate that it specifies the requirement of Section 47 of the said act. The issue was not framed by the Trial Court and no ground is raised for non-framing of the issue before the Appellate Court. The concurrent findings of fact recorded by both the Courts below do not give rise to any substantial question of law.

The second appeal is dismissed.

Judge.

Lanjewar