

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

SECOND APPEAL NO.260 OF 2016

Shyamrao Ganpatrao Pachghare

..vs..

Ramrao Ganpatrao Pachghare

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri P.S. Patil, Counsel for the appellant.

Shri J.J. Chandurkar, Counsel for the respondent.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 16, 2017.

1. Heard learned counsel Shri P.S. Patil for the appellant and learned counsel Shri J.J. Chandurkar for the respondent.

2. The present appeal is filed by the unsuccessful appellant/plaintiff who lost in Regular Civil Suit No.30 of 2006 which was also confirmed by learned Principal District Judge at Amravati in Regular Civil Appeal No.27 of 2008 dated 21.12.2013.

3. Appellant Shyamrao and respondent Ramrao are real brothers. The partition between these two brothers took place sometime in the year 1983-84. In that partition, field survey No.47/2 of Mouza Mahuli Jahagir, Taluka and District Amravati was fallen to the share of the present respondent/defendant. The Well, which is the dispute matter of

suit, is situated in field survey No.47/2. There is no dispute at all in between the parties that the Well which is situated in survey No.47/2 was fallen to the share of the respondent/defendant.

4. The the appellant/plaintiff approached to the Court with a case that though he is having right to fetch the water from the Well situated in survey No.47/2 to irrigate his land, he has been obstructed by the respondent/defendant. Therefore, he filed a suit for perpetual injunction against the respondent/defendant.

5. Both the Courts below answered the claim of the appellant/plaintiff in negative.

6. It is to be noted that 7/12 extract of the appellant/plaintiff does not show that he has a right to fetch the water from the respondent/defendant's agricultural field. Similarly, there is no mention in the 7/12 extract of the respondent/defendant's agricultural field that from the Well, which is situated in his field, the plaintiff is having right to take the water. 7/12 Extracts Exhibits 38, 83, and 32 for the years 2000-01, 2002-03, and 2003-04 disclose that to irrigate the field the appellant/plaintiff has to take water from the disputed well. However, it is to be noted that these 7/12 extracts are manually prepared and not computer generated. The appellant/plaintiff himself has admitted in his cross-examination that no prior Notice was given to the respondent/defendant while effecting the change in the 7/12

extract thereby creating right of the plaintiff.

7. Further, it is to be noted that though it is the case of the appellant/plaintiff that the dispute and quarrel arose in between them in respect of share of the water that resulted in filing of the suit, conveniently the appellant/plaintiff failed to report the matter about quarrel in between two brothers with the police authorities.

8. After having gone through both the impugned judgments passed by the Courts below and after having heard learned counsel Shri P.S. Patil for the appellant and learned counsel Shri J.J. Chandurkar for the respondent *in extenso*, I am of the opinion that the second appeal does not involve any substantial question of law. Both the Courts below correctly recorded the concurrent findings of facts on the basis of material brought on record. No perversity is found in the judgments impugned in this second appeal. The second appeal must fail and is dismissed.

JUDGE

!! BRW !!

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