

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

**SECOND APPEAL ST. NO. 11738 OF 2018
WITH
CIVIL APPLICATION NO. 1091 OF 2018
IN
SECOND APPEAL ST. NO. 11738 OF 2018**

Arjun Kakaso Roman & Anr. ...Appellants

Versus

Shivaji Sarjerao Roman ...Respondent

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Mr. B.A.Lawate for the Appellants.

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**CORAM : A. M. DHAVAL, J.
DATE : AUGUST 29, 2018**

PC :-

1. The original plaintiff-Shivaji S. Roman and defendant No.2 -Kalidas A. Roman by a registered Sale Deed dated 3rd April 2000, which is at Exhibit 38, purchased 2 Are land from defendant No.1 Arjun K. Roman near streamline for well. In the year 2005, the plaintiff had filed Regular Civil Suit

No. 22 of 2005 in the Court of Civil Judge, Junior Division, Dahiwadi claiming half share in the well water and for injunction and determination of time of fetching water. Defendant No.1 contested the suit, contending that there was no partition between him and his co-owner Bajrang. The well was in existence since beginning. Defendant No.1 had half share and Bajrang had half share. Defendant No.2 did not file written statement. The learned Judge of the trial Court considered the evidence of the plaintiff and held that he failed to establish the ownership right and right to fetch water from the well to the extent of half share. Thereafter, the plaintiff had preferred Regular Civil Appeal No. 325 of 2010 before the Court of District Judge-1, Vaduj. After considering the evidence, the learned District judge allowed the Appeal and reversed the judgment of the trial Court and decreed the suit by granting declaration and injunction, but no relief was granted in regard to the fixing time limit of fetching water.

2. Learned advocate Mr. B.A.Lawate appearing for the appellants strenuously argued that there are no concurrent findings. The trial Court has held that the plaintiff/ appellant failed to establish his right on the land to the extent of half share. There is no evidence to show that the well was dug, constructed, pipe line was fixed and the electric motor on the well was installed by the plaintiff as claimed by him. The First Appellate Court has not considered the facts and the reasoning of the learned Judge of the trial Court, and has arrived at wrong conclusion.

3. When the registered Sale Deed, at Exhibit 28, shows that the plaintiff and defendant No.2 jointly purchased 2 Are land from defendant No.1 specifically for construction of the well as the said land was situated near streamline, it is clear that there was no well in the said land. The copy of the said registered Sale Deed does not disclose any right of Bajrang reserved in respect of the said land. When there is well in the

land jointly owned by defendant Nos. 2 and the plaintiff, there will be presumption that the well belongs jointly to them and each was having half share. There is no material to show that Bajrang and defendant No.1 had constructed the well from their own funds. The learned Judge of the trial Court did not consider the factual aspect of presumption of ownership of the land with the plaintiff and defendant No.2. The said mistake has been rectified by the Appellate Court. There are good reasons for holding that the plaintiff and defendant No.2 were the joint owners of the well and each was having half share. I find that it is a pure case of appreciation of evidence in which this Court in the Second Appeal will rarely interfere. There is no perversity, ignorance of the evidence and consideration of inadmissible evidence. Hence, there is no scope for interference. On going through the judgment of the Appellate Court, I find that the Appellate Court has given sound reasons to decree the

suit. There is no substantial question of law involved. The Second Appeal deserves to be dismissed and it is accordingly dismissed.

4. In view of disposal of the Second Appeal, pending Civil Application filed in it, does not survive and the same is accordingly disposed of.

[A. M. DHAVALE, J.]