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

SECOND APPEAL NO.347 OF 1993

- | | | |
|----|---------------------------------|-----------------|
| 1. | Hiraman Devram Dhongade | |
| 2. | Nanabhau Deochand Dhongade | |
| | Nos.1 and 2 residents of at and | |
| | post Ijmane, Taluka Baglan, | |
| | District Nasik | ... Appellants |
| | v/s | |
| 1. | Baburao Sukhdeo Kakade | |
| | Resident of at and post Borse, | |
| | Taluka Baglan, District Nasik | |
| 2. | Mothabau Deochand Dhongade | |
| | Resident of at and post Ijmane, | |
| | Taluka Baglan, District Nasik | ... Respondents |

Ms A.R.S. Baxi for the Appellants.
None for the Respondents.

CORAM : N.M. Jamdar, J.

DATE : 25 January, 2018.

ORAL JUDGMENT :-

The Appellants – original Defendant Nos.1 and 2 have challenged the concurrent judgments and orders passed by the

learned Civil Judge, Junior Division, Satana and learned Additional District Judge, Malegaon decreeing the Suit filed by the Respondent – Plaintiff and dismissed the Appeal filed by the Appellants. The Respondent – Plaintiff filed a Suit in respect of a well situated in Gat No.103 at Village Ismane, Taluka Baglan, District Nashik.

2. It was the case of the Respondent – Plaintiff that the suit well is situated in Gat No.103 and the same Gat No. was purchased by the Respondent – Plaintiff on 29th August 1988. It was the case of the Respondent – Plaintiff that the Appellants have not concern with the said well and he started obstructing the Respondent – Plaintiff from taking water. Therefore, a Suit had to be filed.

3. The learned Civil Judge, by judgment and order dated 22nd January 1991 decreed the Suit No.38 of 1986, Appeal bearing No.26 of 1991 filed by the Appellant was dismissed by the learned District Judge by judgment and order dated 24th February 1993. Thereafter, Second appeal is filed and it was admitted on the question of law regarding the partition and rights of the parties to the well.

4. Heard the learned counsel for the Appellants.

5. The fact that the Respondent – Plaintiff has purchased

the property by sale-deed dated 29th March 1990, is not in dispute. It is the case of the Appellants that there was partition earlier between the brothers and in the said partition, right to draw water from the well is given to the Appellants. The learned counsel for the appellants submitted that even though the partition deed was filed on record and even though there was a purshis for closure of evidence, the learned Additional District Judge did not consider the aspect of admission of the Respondent – Plaintiff before the Tahasildar. I have considered this submission. It is the case of the Appellants that before the Tahasildar, there were tenancy proceedings in which a statement of the Respondent – Plaintiff was recorded and the Respondent – Plaintiff admitted that there was a right to draw the water from the well. However, the Appellants did not produce the certified copy of the statement. Since the appellants were relying on this statement to claim right in the suit well, it was necessary for them to do so. Both the Courts rightly held that in the absence of cogent reason why original could not be produced, the photocopy could not be looked into the evidence. The Appellants sought to examine an Officer from the Tahasildar Office. He deposed that there was no tenancy proceedings in the Tahasildar Office in the year 1982 and there was no registration. With this state of evidence produced by the Appellants, it cannot be said that the Appellants proved their right to draw water in the suit well which was admittedly purchased by the Respondent – Plaintiff. There is no

perversity in the appreciation of evidence. Possible findings of fact have been recorded. The question of law framed is answered against the Appellants.

6. The Second Appeal is dismissed. No order as to costs.

(N.M. Jamdar, J.)