

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5118 OF 2019

LAHANBHAU DADA PERANE
VERSUS
GOPINATH KESHAV NIMSE AND OTHERS

...

Advocate for the Petitioner : Shri Hon Ashwin V.

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 10th June, 2019

Per Court:

1 The petitioner/ original defendant no.4 is aggrieved by the impugned judgment of the first Appellate Court dated 04.02.2019 by which, Miscellaneous Civil Appeal No.133/2018 has been allowed and the petitioner is restrained from obstructing the plaintiffs from taking water from the suit well by using the existing electric motor.

2 The petitioner submits that the Trial Court has rejected the applications exhibit 5 and exhibit 24 filed by the plaintiffs in RCS No.554/2008, vide order dated 12.10.2017. The plaintiffs preferred MCA No.133/2018, which was partly allowed by the impugned judgment. Grievance is that though in 1981, the plaintiffs were allowed to take water from the suit well by installing the electric motor by way of an agreement between the parties, the situation has recently undergone a change and the plaintiffs have their own well in their own land. Now that they are self sufficient and can draw water from their own well, the petitioner/

defendant no.4 was right in preventing the plaintiffs from drawing water from the suit well, which has come to the share of the petitioner.

3 I have considered the strenuous submissions of the learned advocate for the petitioner and have gone through the ten grounds formulated in the memo of the petition.

4 From the record, it reveals that there was an agreement between the parties in 1981 permitting the plaintiffs to draw water from the suit well by affixing electric motor. There is nothing on record to indicate that the plaintiffs have sunk a new well in their land and therefore, may not find it necessary to draw water from the suit well that has come to the share of the petitioner. The learned advocate for the petitioner has heavily relied upon the order dated 12.10.2017 passed by the Trial Court in which, it was concluded that though there is no evidence about existence of two wells, there is no evidence that the suit well is in existence.

5 I find from the record that the existence of one well is never in dispute and by the agreement of 1981, the plaintiffs were permitted to draw water by the use of electric motor to be installed at the said well. It has been 38 years since this arrangement was continued. Whether, the plaintiffs have sunk a new well will have to be considered by the Trial Court on the basis of oral and documentary evidence. In my view, the first Appellate Court has rightly concluded that if, in such disputed backdrop,

the plaintiffs are restrained from drawing water from the suit well in the absence of any evidence as regards the existence of the second well, the agricultural activities of the plaintiffs are likely to be affected. It cannot be disputed that if the rainy season is healthy, the need for water to be drawn from the well, either by the plaintiffs or defendants, would diminish and would be limited to the need of water for agricultural activities, besides the normal rain fall. The first Appellate Court has taken a plausible view to avoid an irreparable harm to the plaintiffs. In this backdrop, I do not deem it appropriate to interfere in the impugned order merely because a second view is possible.

6 As such, this Writ Petition being devoid of merit is, therefore, dismissed.

7 As the suit is lodged in 2008, I deem it appropriate to direct the Trial Court to decide RCS No.554/2008 as expeditiously as possible and in any case, on or before 31.12.2019. The litigating sides would extend their cooperation for an expeditious disposal of the suit and shall be precluded from seeking adjournments on unreasonable or trivial grounds.