

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

**CIVIL APPLICATION NO.502 OF 2019
IN
SECOND APPEAL NO.548 OF 2013**

Yashwant Pandurang Patil
since deceased through L.Rs.

1a) Anjani Yashwant Patil and Ors. ... Applicants

Vs.

Namdeo Tukaram Patil
since deceased through L.Rs.

a) Dattatray Namdeo Patil and Ors. ... Respondents

.....

Mr. Amol P. Mhatre for the applicants.

Mr. T.S. Ingale for respondent Nos.1a to 1c.

.....

CORAM : M. S. KARNIK, J.

DATE : 11th OCTOBER, 2019.

P. C.:

1. Heard learned counsel for the applicants and learned counsel for the respondent Nos.1a to 1c.

2. The suit was filed for partition and separate possession. The suit was partly decreed. The Appeal was dismissed. The present Second appeal was admitted on 28.01.2014. The application has now been filed by the applicants-original plaintiffs for granting necessary permission to them for

further digging up a well and further construction of protection wall around the well on Survey No.214 Hissa No.6. There is no dispute that there is a well in existence. Learned counsel for the contesting respondent Nos.1a to 1c does not dispute that the well is situated in the land which is presently in possession of the applicants. Though he has no objection if the application is allowed, he apprehends that on the basis of permission granted the applicants-original plaintiffs may claim equity. It is clarified and it is also stated by learned counsel for the applicants that the applicants will not claim any equity if the present application is allowed.

3. Considering the averments made in the application, the application is allowed in terms of prayer clause (a) subject to the clarification that the applicants will not claim any equity on the basis of the permission so granted.

4. The Application is disposed of with no order as to costs.

(M. S. KARNIK, J.)