

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO.1869 OF 2020

SALIM SHAH HUSSAIN SHAH GADIWALE
VERSUS
BHAGWAN KAILAS USARE ND ANOTHER

WITH

9 WRIT PETITION NO.1865 OF 2020

SALIM SHAH HUSSAIN SHAH GADIWALE
VERSUS
BHAGWAN KAILAS USARE ND ANOTHER

...

Mr. R.R. Shaikh, Advocate for petitioners in both petitions.

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CORAM : **Rohit B. Deo, J.**

DATE : 4th February 2020.

ORDER :-

. The petitioner in Writ Petition 1869 of 2020 is the plaintiff in Regular Civil Suit 65/2018 brought for perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the well situated in Gut 286.

2. The trial Court has rejected the temporary injunction and the appeal is dismissed. The petitioner - plaintiff is invoking writ jurisdiction.

3. Writ Petition 1865 of 2020 is filed by the petitioner, who is the defendant in Regular Civil Suit 79/2018 in which the plaintiff is granted an injunctive relief and the defendant - petitioner herein is restrained from disturbing possession as regards the well situated in Gut 286. The appeal is dismissed.

4. A short question is involved. While both the Courts below have held that there is only one well in Gut 286 and which is owned by the defendants in Regular Civil Suit 65/2018 as is evidence from the mutation entry 1576, the petitioner contends that he has no grievance whatsoever as regards the said well, and the grievance is as regards another well which the petitioner has constructed after purchasing the suit filed on 22.05.2018. Admittedly, the mutation entry 2033 which records the second well, is cancelled by the Authority which has held that as of fact there is no well in existence and no well was constructed after the petitioner purchased portion of Gut 286.

5. The trial Court has observed that in response to the Court query both the plaintiff and defendants stated that there is only one well in Gut 286.

6. In this view of the matter, while I am inclined to issue notice, in the event the petition is ultimately dismissed, the respondents shall have to be compensated.

7. Issue notice to the respondents subject to the petitioner deposited Rs. 10,000/- (Rupees Ten Thousand) in the Registry of this Court, within one week.

8. If the amount of Rs. 10,000/- is not deposited within a week, both the petitions shall stand dismissed without reference to this court.

9. If the amount of Rs. 10,000/- is deposited, notice shall be issued returnable in two weeks after such deposit.

10. Humdast allowed.

(ROHIT B. DEO, J.)

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