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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 4556 OF 2022**

JAGANNATH BANDU MALI
V/s.
UTTAM DATTU MALI AND ORS

....PETITIONER
.....RESPONDENTS

Mr. Nikhil N. Pawar Advocate for the Petitioner
Mr. Aditya S. Raktade a/w Mr. Abhishek Devkar for Respondents

**CORAM : NITIN W. SAMBRE, J.
DATE: APRIL 28, 2022.**

P.C.:

1) Suit of the Petitioner-Plaintiff is for declaration of ownership over the well situated in the suit property by virtue of oral partition. Prayer for injunction restraining the Respondents-Defendants from taking electric connection or drawing water from the suit well is also moved.

2) Prayer for temporary injunction of the Petitioner came to be allowed vide order below Exh. 6 passed on 22/09/2021 whereby Defendant no. 1, 3 to 13 are restrained from obstructing Plaintiff from drawing water from the Suit well. Feeling aggrieved, Defendant nos. 1 to 8 preferred Appeal being Misc. Civil Appeal No. 56/2021 in which Petitioner preferred Cross-Objection Exh. 15. Appeal of the

Respondents-Defendants came to be dismissed on 30/03/2022 so also cross-objection Exh. 15 preferred by the Petitioner. Feeling aggrieved by the dismissal of Cross-objection in the said Appeal, Petitioner has preferred this Petition.

3) Relief claimed in the Cross-objection by the Petitioner-Plaintiff is, seeking temporary injunction against Respondent-Defendant from obtaining electric connection so as to facilitate drawing water.

4) While questioning the aforesaid order impugned, contentions of the counsel for the Petitioner are, since 1972, Petitioner exclusively is drawing water from the Suit well. In view of terms of the oral partition Defendants are not having any share or right in the well water. According to him, attempt on the part of the Respondents-Defendants is to frustrate the very claim of the Petitioner of having exclusive rights over the well water situated in land Gat No. 2398 i.e. Suit property i.e. 'C' so also connecting the said electricity connection on the well in suit property A, viz - Gat No. 2430. It is claimed that electric connection is sought based on irregular and forged documents.

5) While countering aforesaid submissions, counsel for Respondents-Defendants would support the order of dismissal of

such prayer at Exh. 15, as according to him, Court has appreciated coparcenary nature of relations and having regard to the nature of property being that of joint family, rightly rejected the claim.

6) Appreciated rival submissions.

7) Fact remains that Petitioner has failed to discharge burden by demonstrating that Suit property was partitioned by metes and bounds. Rather, possession and boundaries of the Suit property which are claimed to be in possession of the Plaintiff is specifically denied by Respondents-Defendants. As such, it was for the Petitioner to demonstrate that disputed well was situated in the land which is exclusively in his possession, which he has failed to. Apart from above, Respondents-Defendants have demonstrated that well is situated in land Gat No. 2398 which is recorded in the 7/12 extract of the said Gat number and competent authority has already sanctioned the electric connection to them.

8) In the aforesaid background and having regard to concurrent findings recorded by both the Courts below, no case for interference is made out. Petition stands dismissed.

[NITIN W. SAMBRE, J.]