

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

21 SECOND APPEAL NO.8 OF 2019
WITH CA/8947/2018 IN SA/8/2019

GANPATI GUNDAPPA BIRADAR
VERSUS
RAM GUNDAPPA BIRADAR

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Advocate for Appellant : Mr. Pathade Vishweshwar H.

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CORAM : S. G. MEHARE, J.
DATE : 31.10.2023

PER COURT :-

1. Heard the learned counsel for the appellant.
2. The appellant/plaintiff and respondent are brothers. The admitted facts of the case were that the father of the plaintiff, defendant and another brother, partitioned the land during his life time orally. After the oral partition, the three brothers started enjoying and using their respective shares. The plaintiff claimed that he has equal share in a Well to fetch the water, which was situated in the field came to the share of the defendant.
3. Learned counsel for the appellant vehemently argued that both Courts did not consider the evidence of witness Digamber. The consent letter produced on record was also

doubted illegally. Jointness is the presumption. The defendant's brother did not rebut the presumption. Considering the situation, when the lands were partitioned, it is presumed that the shares in the Well must have also been granted. Hence, the appellant has right to fetch the water from the Well is a substantial question of law.

4. Learned counsel for the respondent states that the plaintiff has admitted in cross-examination that the defendant has exclusive right over the Well. Admission is the best evidence. There was nothing before the Court to believe that the plaintiff had equal share to fetch the water from the Well. Hence, no substantial questions of law have been involved in this case.

5. Perused the impugned judgments and decrees. The plaintiff had candidly admitted in his cross-examination that the Well in question went to the share of the defendant Ram Gundappa Biradar. To counter his admission, he had examined one witness Maruti Gundappa Vishwanath, who had produced one consent letter about the transfer of share in favour of plaintiff and defendant for consideration of Rs.5000/-. Both the Courts have evaluated the evidence and correctly recorded the findings that the plaintiff had damaged his case to such an

extent that the defendant is to be believed. It is not the case that it was a fraudulent admission. It was an admission procured in the Court of law by his cross-examination. The evidence which has been produced before the Court has been correctly appreciated and the conclusions are also in consonance with the admissions of the plaintiff which destroyed his case. There is nothing on record to repair the material admission.

6. In view of the above discussion, the Court is of the view that no substantial questions of law are involved in this appeal.

7. Hence, second appeal stands dismissed at the admission stage.

8. Civil Application stands disposed of accordingly.

(S. G. MEHARE, J.)

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vmk/-