

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

904 SECOND APPEAL NO.143 OF 2023

- . Shankar S/o. Narhari Deshmukh,
Age: 60 years, Occu.: Agril,
R/o.: Warwanti, Tal. Osmanabad .. **Appellant**
(Ori. Plaintiff)

Versus

1. Rajesh S/o. Chandrakant Naigaonkar,
Age: 50 years, occu. Agril & Business,
R/o. C/o. Naigaonkar Medical
& General Stores,
Tuljabhavani Shopping Center, In front of
S. T. Stand, Osmanabad, Dist.: Osmanabad
2. Mukesh S/o. Chandrakant Naigaonkar,
Age: 58 years, Occu.: Agril & Business,
R/o. C/o. Naigaonkar Medical
& General Stores,
Tuljabhavani Shopping Center, In front of
S. T. Stand, Osmanabad, Dist. Osmanabad
.. **Respondents**
(Ori. Defendants No.2&3)

...

Advocate for Appellant:
Mr. Sushant Baburao Choudhari

...

CORAM: ARUN R. PEDNEKER, J.

DATE: 19th JULY, 2023

PER COURT:

1. Heard.
2. The courts below have concurrently held
that the well which the appellant / plaintiff was

digging is within the portion of the property of the defendants and, as such, no injunction can be granted against the defendants. The courts below have held that the appellant's construction of the well is in the defendants portion, and, as such, no injunction can be recorded against the defendants for interfering in the construction.

3. Mr. Sushant Baburao Choudhari, learned counsel for the appellant in the present second appeal submits that it is admitted by the defendants that the well is in the stream and that the commissioner's report indicate that the stream is in the portion of the plaintiff's land, whereas the well is in the defendants land.

4. Mr. Sushant Baburao Choudhari, learned counsel for the appellant submits that the commissioner's report is not proved and ought not to have been accepted.

5. The courts below have held that the defendants case is that the stream as well as the

well is in the defendants land. The commissioner was appointed by the court to demark the well as well as the stream. The report indicates that the stream is in the plaintiff's land, whereas the well is in the defendants land. If we discard the report of the commissioner there is no evidence to show that the water stream and the well is in plaintiff's land. It is also not admitted by the defendants that the well and the stream are in the plaintiff's land.

6. It is for the plaintiff to establish his case by producing necessary sketch along with plaint. Since, the finding of the commissioner's report is partly in favour of the plaintiff, the plaintiff can rely upon the report or reject it entirely. The plaintiff cannot rely only upon the part of the report which is in his favour and make submission before this court to reject the findings in the remaining part of the report. Since, the plaintiff rejects the report, it was for the plaintiff to establish his case. He has

not been able to establish that the well which is constructed is within his own land.

7. This being the factual issues, no substantial question of law arises for consideration and the second appeal is dismissed.

[ARUN R. PEDNEKER, J.]

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