

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5193 OF 2022**

RAMBHAU YASHWANT PATIL DECEASED THROUGH LRS
SUNDARABAI RAMBHAU RAMCHANDRA PATIL
VERSUS
KASHINATH YASHWANT PATIL DECEASED THROUGH LRS
KAUSALYABAI KASHINATH PATIL AND OTHERS

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Mr. Amol S. Sawant, Advocate for the Petitioners.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 02nd FEBRUARY, 2023.**

PER COURT:-

1. The petitioners are aggrieved by the order dated 03.03.2022 passed by the Executing Court in Regular Darkhast No.75/2007, whereby the Executing Court has held that the Darkhast is maintainable in the form in which it is filed and the decree holder is entitled to the relief claimed in the execution proceedings.

2. Regular Darkhast No.75/2007 was filed by respondent no.1 for executing the judgment and decree passed in RCS No.131/1984. RCS No.131/1984 was filed by the petitioners in respect of a well, which according to respondent no.1 was in his exclusive ownership and a declaration to that effect was sought alongwith an order of perpetual injunction as against the petitioners and the other respondents restraining them from obstructing the use of well by the petitioners and not to use the well water for the purpose of watering their lands. RCS No.335/1987 was instituted by the petitioners seeking an order of permanent injunction restraining respondent no.1 from laying pipeline through the field of the petitioners and also for ownership of the well.

3. As far as RCS No.131/1984 is concerned, it is necessary to reproduce the findings as to the issue no.2 as regards the ownership of the suit well and issue no.4 as regards the entitlement of respondent no.1 to the injunction as prayed by him against all the defendants:

“As to issue no.2:- Considering my findings for point nos.1 I hold that plaintiff proved that he is owner of the suit well. Hence, I answer issue no.2 in affirmative.

As to issue no.4:- Considering my findings for issue nos.1 to 3, I hold that plaintiff is entitled to injunction as prayed by him against all defendants. Hence, I answer this issue in affirmative.”

4. By the judgment and decree, the following order was passed:

"ORDER

1. The suit is decreed with costs.

2. It is declared that according map mentioned in para no.1 well mentioned in the land A.B.C.D on the bank of nala is exclusively owned by the plaintiff.

3. Defendants are hereby permanently restrained from interfering in the right of the plaintiff to take water of the well mentioned in para no.1 of the plaint.

4. Decree be drawn up accordingly.

5. As far as RCS No.335/1987 is concerned, considering that the issue of the disputed well was subject matter of RCS

No.131/1984, the petitioners' prayer for declaration that respondent no.1 has no right to use water from the disputed well was rejected and the suit was partly allowed whereby respondent no.1 was permanently restrained from laying pipeline through the field of the petitioners.

6. An execution application was preferred by respondent no.1 under the provisions of Order XXI Rule 11 of the Code of Civil Procedure seeking execution of the decree by removal of the motor pump, which had been installed by the petitioners on the disputed well. An objection was raised under Section 47 of the Code of Civil Procedure by the petitioners objecting to the execution be granted in the form as prayed for by placing reliance on the decree in RCS No.131/1984 in as much as that by the said decree the petitioners were permanently restrained from interfering in the right of respondent no.1 to take water from the well mentioned in paragraph no.1 of the plaint.

7. Learned counsel for the petitioners submits that the relief which was sought by respondent no.1 in RCS No.131/1984 was not granted by the Trial Court and only the relief of permanent injunction restraining the petitioners from interfering in the right of the plaintiff to use the water from the disputed well was allowed. He would further submit that considering that the injunction as sought for in prayer clause (B) of RCS No.131/1984 was not granted in his entirety, the execution application seeking execution of the decree by removing of the motor pump of the petitioners amounts to going beyond the decree and is impermissible. In support of his contentions learned counsel relies upon the decision of the Apex Court in case of **Gurdev**

Singh Vs. Narain Singh, reported in (2007) 14 Supreme Court Cases 173.

8. I have considered the submission raised by the petitioners.

9. RCS No.131/1984 was filed by respondent no.1 seeking a declaration of exclusive ownership of the disputed well and for an order of permanent injunction restraining the petitioners and the other respondents from interfering with respondent no.1's right to the use of the disputed well and right to restrain the petitioners from using the well water for the purpose of his land. The findings of the Trial Court reflects that after considering the evidence on record the Trial Court has held that respondent no.1 is owner of the well. The findings in respect of issue no.4 is that respondent no.1 is entitled to injunction as prayed by him against all the defendants and hence, the issue came to be answered in affirmative. However, in the operative part of the order the petitioners were permanently restrained from interfering in the rights of the plaintiff to take water from the well mentioned in paragraph no.1 of the plaint.

10. The submission of the learned counsel for the petitioners is that the petitioners are not interfering with the right of the plaintiff to take water from the disputed well and the Trial Court did not pass any direction as regards the removal of the motor pump from the water well. In my opinion, the said objection is nothing but raising hairsplitting argument in as much as once the Trial Court has held that respondent no.1 is the owner of the disputed well and is entitled to the injunction as prayed by him against all the defendants, the operative part has to be read

in consonance with the findings of the Trial Court. In my opinion, the execution application which has been filed seeking removal of the water pump cannot be faulted with in as much as operation of the water pump results into interfering with the petitioners' right to the use of the well water which has been specifically restrained by the Trial Court in RCS No.131/1984. Pertinently it is worthwhile to note that in RCS No.335/1987 the Trial Court has rejected the petitioners' prayer for an order of the permanent injunction restraining respondent no.1 from using the well water.

11. Considering the above, the objection of the petitioners that the present decree is not executable cannot be said to be legally sustainable. Learned counsel for the petitioners has not been able to demonstrate as to how the operation of the water pump on the disputed well will not interfere with the rights of respondent no.1 to take the well water. Once the judgment and decree restrains the petitioners from interfering in the rights of respondent no.1 to take well water, the operation of the water pump will obviously add to the detriment of the right of respondent no.1 which has been protected by the judgment and decree dated 16.04.2005. Considering the provisions of Section 47 of the Code of Civil Procedure the Executing Court has the power to decide the question as regards the execution, discharge and satisfaction of the decree and in my opinion, the Executing Court by the impugned order dated 03.03.2022 has rightly decided the issue as regards the execution of the decree. As far as the decision in case of ***Gurdev Singh Vs. Narain Singh*** (supra) which has been relied upon by the learned counsel, in the facts of that case the decree which has been passed was for an order of injunction restraining the defendants from planting trees, however in

execution the plaintiffs had asked for removal of trees, which the Apex Court held was not provided in the decree. In my opinion, the said decision does not assist the case of the petitioners in as much as while determining as to whether the rights of respondent no.1 in the use of the well for drawing water is affected by the operation of motor pump, the Executing Court has come to a finding that the operation of the motor pump results into interfering in the right of the plaintiff.

12. Considering the facts of the present case, the decision in the case of ***Gurdev Singh Vs. Narain Singh*** (supra) is clearly inapplicable.

13. For the reasons above, writ petition is devoid of merits and is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE