

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

906 SECOND APPEAL NO. 122 OF 2023

**SHAIKH BASHIR SHAIKH KADAR
VERSUS
RAMDAS RAGHUNATH PATIL DIED L.Rs.DINKAR RAMDAS
PATIL & OTHERS**

...
Advocate for the appellant : Mr.S.R.Dheple
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CORAM : ARUN R. PEDNEKER, J.

DATE : 21.07.2023

P.C. :

1] Heard the learned counsel for the appellant. The learned counsel for the appellant submits that the appellant – original plaintiff filed suit claiming right over the well, which according to the plaintiff, the well is situated in Gat No.243. The plaintiff contended that the plaintiff purchased plot no.1 situated in Gat No.243 from Madanbhai Jain and others on 13.11.1996 along with well situated in Gat No.243 and that he had 0-5-5 right over the water from the well in Gat No.243 as per the sale deed executed in his favour.

2] The suit was contested by the adjacent land owners. The defendants contended therein that the suit well is situated in Gat No.242 having original survey No.157 is the ancestral property of the defendants and Gat No.243 is situated towards eastern side. There is a 'L' type structure towards east-south of the land of the defendants in which one well is situated which is dug by the fore-father of the defendants and the defendants filed counter claim in the suit, claiming that the well situated in Gat No.242 belongs to them and the plaintiff has no right over it.

3] The suit filed by the plaintiff as well as the counter claim filed by the defendants were rejected by the trial Court and held that on the basis of the evidence led by the plaintiff by examining the vendor i.e. PW-2, who stated that he sold the plot no.1 situated in Gat No.243 along with 0-5-5 share in well to the plaintiff. However, the well in the suit land is not the same of which the plaintiff is claiming his right.

4] On the basis of the evidence of vendor, the trial Court rejected the claim of the plaintiff on the well. The trial Court held that the well is not in Gat No.243 and that the plaintiff has not established that this is the same well, which he received the same under the sale deed. The same finding is reiterated by the Appellate Court in the Appeal filed by the plaintiff. The order of the trial Court as well as the Appellate Court has now challenged before this Court by way of filing the present Second Appeal.

5] The learned counsel for the appellant submits that due to dismissal of the counter claim, there are complications and that the well is situated in Gat No.243 and the dismissal of the counter claim was also not challenged by the defendants before the Appellate Court.

6] Since the trial Court as well as the Appellate Court has held that the well received under the sale deed is not one and the same of which the plaintiff is claiming half share of water in it and there is no evidence brought on

record that the plaintiff has constructed any other well in the suit land. The plaint is rightly rejected by the courts below.

7] Dismissal of counter claim does not create any right in favour of the plaintiff. The plaintiff has to establish its own case which it had failed to do so. Thus, no interference is called for. Second Appeal is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC