



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 197 OF 2022
WITH
CIVIL APPLICATION NO. 6167 OF 2022 IN SA/197 OF 2022

1. Ashok S/o. Gopal Jadhav
2. Balu S/o. Gopal Jadhav
3. Gorakh Baburao Jadhav (Died)
Through his Legal Heirs
- 3-A. Vishnuadas @ Gotya Gorakh Jadhav
- 3-B. Smt. Mirabai Gorakh Jadhav
4. Mahesh Bharat Jadhav
5. Santosh Raosaheb Jadhav
6. Sagar Gorakh Jadhav

... APPELLANTS
(Ori. Defendants)

VERSUS

1. Bhimaji S/o. Sonaji Jadhav

... RESPONDENT
(Ori. Plaintiff)

...
Mr. Rahul O. Awasarmol – Advocate for Appellants
Mr. Amol K. Gandhi – Advocate for sole Respondent
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 24th July, 2024

ORDER :

1. Heard rival submissions on admission.

2. The appellants who are the original defendants in Regular Civil Suit No. 218 of 2017 have challenged the judgment and decree passed by learned District Judge – 9, Ahmednagar (hereinafter referred to as ***“the learned First Appellate Court”***) in Regular Civil Appeal No. 417 of 2019 passed on 15.02.2022. The learned First Appellate Court under the impugned judgment and decree has set aside the judgment and decree dated 13.09.2019 in Regular Civil Suit No. 218 of 2017 passed by the learned 10th Joint Civil Judge Senior Division, Ahmednagar (hereinafter referred to as ***“the learned Trial Court”***) whereby suit of the present respondent/plaintiff was dismissed.

3. **Brief facts giving rise to present Second Appeal are as under :**

The respondent/plaintiff filed the aforesaid Regular Civil Suit No. 218 of 2017 for permanent injunction against the appellants for not to obstruct his act of taking water to his land survey No. 140/3 from the well situated in his another land survey No. 152/1 by way of pipeline passing through survey Nos. 143 and 144 owned by the appellants. The respondent/plaintiff also claimed mandatory injunction to restore his pipeline which was broken by the appellants/defendants in their land survey No.143. The plaintiff had claimed that, he was taking water to his field survey No. 140/3 through the aforesaid pipeline since long, but the defendants who are the present appellants often used to break the said

pipeline and thereby obstructed his user of water through the said pipeline.

4. The appellants/defendants resisted the said suit by claiming that, the plaintiff is in fact carrying the sewage water of Ahmednagar city from the said pipeline which passes through the place nearby their houses in the aforesaid land survey Nos.143 and 144. According to them, due to leakage of said pipeline the sewage water of the said pipeline gets accumulated around their houses causing nuisance to them in form of foul smell. The learned Trial Court after trying the said suit dismissed the same on the ground that, the plaintiff found taking water from the said pipeline in dispute without permission of the Tahsildar as per Section 49 of the Maharashtra Land Revenue Code (*"the Code", for short*) and therefore, not entitled for claiming either permanent or mandatory injunction as claimed. However, the learned First Appellate Court reversed the finding of the learned Trial Court and granted permanent as well as mandatory injunction against the present appellants as per the prayers in the suit. Hence, this Second Appeal.

5. Learned Counsel for the appellants/defendants submits that, the learned First Appellate Court has definitely erred in granting injunction in favour of the respondent/plaintiff by misinterpreting Section 49 of the Code. According to him, the substantial question of law involved in the

present appeal is whether the learned First Appellate Court has erred in holding that no written permission from the concerned Tahsildar was required for laying the pipeline ?

6. On the contrary, learned Counsel for respondent supported the impugned judgment of the learned First Appellate Court and submitted that, the wording of Section 49 of the Code itself indicates that there is no need of written agreement between the parties about laying any pipeline. According to him, the pipeline in dispute has been laid down thirty years back and the predecessors of the defendants had agreed for laying of the said pipeline. As such, he prayed for dismissal of the appeal.

7. Admittedly, the learned Trial Court has dismissed the suit of respondent/plaintiff mainly on the ground that, respondent/plaintiff failed to establish that he had obtained permission from the concerned Tahsildar for laying down the disputed pipeline as per Section 49 of the Code. However, the existence of pipeline from survey No.152/1 to Survey No. 140/3 both owned by respondent/plaintiff through the lands of defendants namely survey Nos. 143 and 144, is not seriously disputed. The pleadings of the rival parties in the proceeding before the learned Trial Court have indicated that, respondent/plaintiff is taking water to his land survey No. 140/3 through the said pipeline since beginning. It appears that, the appellants/defendants are opposing the suit on the

ground that, plaintiff is taking sewage water through the said pipeline which causes nuisance to them as mentioned above. However, the learned First Appellate Court has interpreted the wordings of Section 49 of the Code and opined that, a written permission is not required for laying pipeline from the concerned Tahsildar. Thus, the only substantial question of law appears to be involved in the present matter is, whether it is essential to obtain written permission from the concerned Tahsildar for laying down such pipeline by following the procedure contemplated in Section 49(2) of the Code ?

8. On this aspect there is need to reproduce Section 49 of the Code which reads as thus :

49. Construction of water couse through land belonging to other person. - (1) *If any person (hereinafter called “the application”) desires to construct a water course to take water to irrigate his land for the purpose of agriculture from a source of water to which he is entitled (including any source of water belonging to Government from which water is permitted to be taken) but such water course is to be constructed through any land which belongs to or is in possession of another person (hereinafter called “the neighbouring holder”), and if no agreement is arrived at for such construction between the applicant and the neighbouring holder, the person desiring to construct the water course may make an application in the prescribed form to the Tahsildar.*

Explanation — For the purposes of this section, the neighbouring holder includes the person to whom the land belongs and all persons holding through or under him.

(2) On receipt of the application, if the Tahsildar after making an enquiry and after giving the neighbouring holder and all other persons interested in the land, an opportunity of stating any objection to the application, is satisfied that for ensuring the full and efficient use for agriculture of the land belonging to the applicant it is necessary to construct the water course, he may by order in writing, direct the neighbouring holder to permit the applicant to construct the water course on the following conditions : - - - - -

If we go through the wording of first part of Section 49(1) of the Code, it is evident that an agriculturist from a source of water to which he is entitled, can construct a water course from that source to his land from the land belonging to another person or the neighbouring holder. However, the second part indicates that, such water course is to be established only if there is an agreement between himself and the neighbouring holder. Further, it appears that if no such agreement arrived between himself and the neighbouring holder then he may make an application in prescribed form to the concerned Tahsildar. Plain reading of the aforesaid section clearly indicates that, the section does not contemplate any prior permission of the Tahsildar before laying down or establishing a water course of pipeline but it appears that, if the

neighbouring holder or other person consents for the same no such permission is required from the Tahsildar. Further, it is clearly evident that, only in case the neighbouring holder refuses to give consent then the application needs to be filed to the Tahsildar for obtaining such permission. Therefore, the observation of the learned Trial Court that plaintiff without obtaining permission is taking water from the disputed pipeline and therefore, not entitled for injunction as prayed, is definitely perverse. On the contrary, the learned First Appellate Court has rightly interpreted Section 49 of the Code and discarded the necessity of obtaining prior permission of the Tahsildar for laying down the pipeline.

9. Further, so far as other aspects are concerned the existence of disputed pipeline since the year 2005–2006, is fairly admitted. Learned Counsel for the appellants vehemently argued that, though the disputed pipeline was laid down for bringing water from the well situated at survey No. 152/1, but respondent/plaintiff is in fact taking the water from Sina river instead of the said well. However, the defendants have admitted the location of survey No. 152/1 being in the river bed of Sina river. They have further categorically admitted that, plaintiff takes water from the said spot to his land survey No. 140/3 by pipeline. As such, when the well area is situated in the river bed of Sina river nothing can be said to be illegal, if the respondent/plaintiff takes water from the said

river through the pipeline for which he has obtained necessary permission from the Irrigation Department. Further, witness of the appellants/defendants has categorically admitted in his cross-examination that, plaintiff has laid pipeline from survey No. 152/1 to survey No. 143 and also obtained electricity connection to fetch the water from said pipeline. P.W. - 2, Shivaji Anarase who is from Minor Irrigation Sub Division, Ahmednagar has also deposed that, his department is recovering water charges from the agriculturist who take water from Sina river. According to him, the appellants/defendants are also taking water from Sina river to their respective fields. Thus, there is force in the contention of respondent/plaintiff that, the defendants had obstructed his act of taking water from Sina river to his field by breaking his pipeline often.

10. It is significant to note that, the appellants have raised objection to such act of plaintiff of taking water from Sina river mainly on the ground that, there is leakage to the said pipeline and therefore, the sewage water of Ahmednagar city gets accumulated around their houses which causes nuisance to them. However, witness – Balu on behalf of the appellants has clearly admitted that, his father also used to irrigate their land with the same water of Sina river. Thus, when the appellants/defendants are using the same water of Sina river which the plaintiff is using to irrigate

his field then the so called case of nuisance as raised by the appellants/defendants definitely appears a false one. Further, it is most surprising to note that, this Balu while deposing for the appellants has clearly admitted in his cross-examination that, he would not be having any objection to reinstate and reconnect the pipeline, if the dispute in respect of encroachment comes to an end. Thus, from such admission it can be gathered that, the appellants/defendants must have obstructed or broke the pipeline in dispute on the ground of separate dispute of alleged encroachment which may be by the present plaintiff. The appellants/defendants are certainly having legal remedy if such encroachment at the hands of respondent/plaintiff is there. However, it appears that, the appellants/defendants instead of resorting to such remedy, are obstructing or causing damage to the pipeline of respondent/plaintiff.

11. Thus, considering all these aspects it is evident that, the learned First Appellate Court has properly appreciated the entire evidence on record and also made right interpretation of the word “*agreement*” in Section 49 of the Code by holding that, the said word “*agreement*” should not be taken for necessity of written agreement between the parties for laying such pipeline. Therefore, the substantial question of law has been answered by the learned First Appellate Court properly.

Therefore, considering all the other aspects there is no substance in the present Second Appeal. Accordingly, the Second Appeal stands dismissed alongwith pending Civil Application No. 6167 of 2022 and the interim relief granted by this Court under order dated 19.04.2022 specially in respect of stay to the execution and operation of operative part 3(b) of the judgment and order of the learned First Appellate Court, stands vacated.

12. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE