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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 147 OF 2024**

Amogsidha Kallappa Kumbhar deceased
through his Lrs Sarubai Amogsidha Kumbhar ... Appellants
and Ors

vs.

Shrimant Mahadappa Sindagi and Ors ... Respondents

Mr. Anvil S. Kalekar for Appellants.

CORAM : GAURI GODSE, J.

DATED : 13th DECEMBER 2024

ORDER:

1. This second appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing the plaintiff's suit for injunction restraining the defendants from obstructing the plaintiff from using his 1/3rd share in the suit well. Admittedly, the suit well is situated in the land of defendant no.1.

2. Learned counsel for the appellant submits that his predecessor in title, Basavraj had equal rights in the well situated in the defendant no.1's property. He submits that by way of a sale deed, Basavraj transferred his rights to the plaintiff which includes Basavraj's 1/3rd right to fetch water from the well situated in the

defendant no1's property.

3. Learned counsel for the appellant further submits that the mutation entry no. 1163 produced on record supports the plaintiff's contentions that his pre-decessor in title Basavraj has equal rights in the well situated in defendant no.1's property. He therefore submits that in view of the sale deed in favour of the plaintiff and the mutation entry in the name of Basavraj both the courts ought to have granted the injunction as prayed by the plaintiff. He thus, submits that the second appeal would require consideration on the ground that the documentary evidence produced on record by the plaintiff is not correctly appreciated by both the courts.

4. To examine the submissions made on behalf of the appellant, I have carefully gone through both the impugned judgments. It is not in dispute that by way of mutation entry no. 1163, the name of Basavraj was entered having equal rights in the well situated in survey no. 231/2 and 231/3. Both the courts have refused to grant any injunction on the ground that the plaintiff was unable to prove that the well described by the plaintiff was still in existence in defendant no.1's property. The first appellate court has in detail discussed the evidence on record and referred to the admissions given by the plaintiff. From the reasons recorded by the first

appellate court, it is clear that admittedly, the suit well as claimed by the plaintiff was closed and the well in existence on defendant no.1's property was the newly constructed well by defendant no.1. Admittedly, the electricity connection to the suit well was also taken by defendant no.1. Thus, in view of the admissions given by the plaintiff, the first appellate court held that the plaintiff would not get any right in the newly constructed well by defendant no.1, in his independent property.

5. Thus, in the absence of any documentary or oral evidence produced by the plaintiff to support his contentions to claim any right in the newly constructed well by defendant no.1, both the courts have rightly refused to grant any injunction.

6. In view of the admitted facts recorded by both the courts, the impugned judgments and decrees would not require any interference by this court. In view of the concurrent findings recorded based on the admitted facts, the grounds argued on behalf of the appellant would not require any consideration by this court.

7. The second appeal does not raise substantial question of law. Hence, the second appeal is dismissed.

(GAURI GODSE, J.)