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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 366 OF 2022
WITH
INTERIM APPLICATION NO. 2597 OF 2022
IN
SECOND APPEAL NO. 366 OF 2022**

Sadashiv Maruti Gaikwad(since decd. ... Appellants/Applicants
Thr. Lrs) Parvati Sadashiv Gaikwad
and Ors

vs.

Pramod Mansingh Jadhav and Ors ... Respondents

Mr. Kalpesh Patil a/w. Mr. Kunal Shirgire i/b. Mr. Vikas Kolekar for
Appellants.

Mr. Dilip Bodake for Respondent Nos. 1 to 3.

CORAM : GAURI GODSE, J.

DATED : 27th NOVEMBER 2024

ORDER:

1. Heard learned counsel for the appellants. The second appeal is admitted on the following substantial questions of law:

I) Whether the first appellate court could have dismissed the suit when admittedly the suit well is situated on the property belonging to the plaintiffs?

II) In the absence of any supporting evidence on record that the suit well is a public property, whether the reasons

recorded by the first appellate court would be sustainable in law?

2. Learned advocate for respondent nos. 1 to 3 waives notice.
3. In addition to Court notice, learned advocate for the appellants to serve the remaining respondents, by private notice and file affidavit of service.
4. Call for records and proceedings.
5. Printing is dispensed with.
6. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

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7. This application is filed for seeking stay to the impugned judgement and decree . By the impugned judgement and decree the trial court's decree in favour of the plaintiff is set aside and the suit is dismissed. Hence, there is no question of stay to the impugned decree.

8. For the reasons stated above, the interim application is dismissed. The appellants are at liberty to file an appropriate application for appropriate interim relief.

(GAURI GODSE, J.)