

Vina Khapde
(P.S.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.366 OF 2017
WITH
CIVIL APPLICATION NO.553 OF 2016
IN
SECOND APPEAL NO.366 OF 2017

Shri Gangadhar Kisan Jagtap

Appellant /
.. Applicant

Versus

Shri Murlidhar Kisan Jagtap and anr

.. Respondents

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- Mr. Vivek V. Salunke, Advocate for the Appellant/Applicant.
- Mr. Bhushan Ulhas Deshmukh, Advocate for the Respondent Nos. 1 & 2.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 7, 2024

P.C.:

1. Being dissatisfied by the Judgment dated 21 February 2015 passed by the Appellate Court dismissing the Appeal thereby confirming the Judgment and decree dated 10 October 2008 passed by the trial Court in Regular Civil Suit No.90 of 2005, the appellant - original defendant is before this Court.

2. Regular Civil Suit No.90 of 2005 was instituted by the plaintiffs – respondents seeking perpetual injunction restraining the defendant from causing obstruction in use of the Well situated in the land bearing Gat No.48/2 to the extent of half share therein. The case of the plaintiffs was that plaintiff no.1 and defendant are full blood

brothers and the land - Gat No.48 was their ancestral property. On 23rd September 1999, there was partition and accordingly the land - Gat No.48 was divided into Gat No.48/1 and 48/2. The land – Gat No.48/1 was allotted to the plaintiffs and the land – Gat No.48/2 was allotted to the share of defendant. In both lands, there was Well situated and the plaintiffs and defendant have half share in each of the Well.

3. The Suit came to be resisted by the defendant contending that the proper description of the Suit land was not given in the plaint. It was also contended that no obstruction has been caused by the defendant and in fact the plaintiffs have committed encroachment on the land of the defendant. Upon considering the evidence which has come on record, the trial Court held that the plaintiffs have proved their possession over the Suit land as well as in the half share in the Suit Well and decreed the Suit restraining the defendant from causing obstruction to the Plaintiffs' right to the extent of half share in Well situated in the land – Gat No.48/2.

4. Being aggrieved, the original defendant challenged the judgment by filing Regular Civil Appeal No.117 of 2008. The Appellate Court specifically observed that the defendant himself in his written statement has admitted that there is half share of the plaintiffs in the Well situated in his field and the witnesses of the Plaintiffs have

established the said fact. The Appellate Court observed that the defendant has not come with a clear case in as much as there is variance in the pleadings where it has been denied that the Well was not a joint Well and at the same time, it was contended that the defendant has not obstructed the plaintiffs at any point of time and as such no cause of action arose to the plaintiffs to file the Suit. The Appellate Court also took into consideration revenue entry No.1226 which clearly shows that there is half share each of the plaintiffs and defendant in both the Wells situated in their respective fields which was based on the written application and partition deed submitted to the revenue officer and on the basis of the documentary as well as oral evidence, it has come on record. The Appellate Court dismissed the Appeal confirming the finding of the trial Court.

5. Heard Mr. Vivek Salunke, learned counsel appearing for the appellant and Mr. Bhushan Deshmukh, learned counsel appearing for respondent Nos. 1 & 2.

6. Learned counsel appearing for the appellant submits that there is perversity in the findings in as much as the evidence which has come on record has not been properly appreciated by the trial Court as well as the Appellate Court. He would further submit that the revenue entries are for fiscal purpose and do not confer any title. He would submit that the substantial question of law arises as the evidence

which has brought on record, has not been properly appreciated by the Courts below.

7. Considered the submission and perused the impugned order.

8. The Appellate Court has noted that the defendant in his written statement has admitted that there is half share of the plaintiffs in the Well situated in his field. It is also not disputed that there is partition which has been effected between the plaintiffs and the defendant. The factum of said partition is also noted in the revenue record at revenue entry No.1226 which was marked as exhibit No.45. The observation of the Appellate Court is that the revenue entry came to be mutated on the basis of the written application and partition deed submitted to the revenue officer and as such there being no challenge to the partition effected in the year 1999, the revenue entry cannot be ignored. The Appellate Court has rightly considered the admission in the written statement that there is half share of the plaintiffs in the Well situated in the defendant's field. It is also not disputed that the plaintiffs have examined the witnesses who have supported the case of the plaintiffs. Pursuant to the partition the plaintiffs as well as the defendant had half share in the suit property.

9. Considering the documentary evidence coupled with the defendant's own pleadings, the trial Court and the Appellate Court have

rightly appreciated the evidence which has been brought on record. This Court in exercise of the power under Section 100 of the Civil Procedure Code, 1908 is not permitted to re-appreciate the evidence on record.

10. As no substantial question of law arises in the present case, the Second Appeal stands dismissed. In view of dismissal of Second Appeal, any pending Civil Application stands disposed of.

[SHARMILA U. DESHMUKH, J.]

Vina Khadpe

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