

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1113 OF 2024**

Rajgonda Khangonda Patil & Ors.

.. Petitioners

**Versus**

Prakash Babaso Patil & Ors.

.. Respondents

.....

- Mr. Vinayak R. Kumbhar for Petitioners
- Mr. Kuldeep U. Nikam for Respondents

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JANUARY 29, 2024**

**P. C.:**

1. Heard Mr. Kumbhar, learned Advocate for Petitioners and Mr. Nikam, learned Advocate for Respondents. Respondents are Plaintiffs in the Civil Suit seeking permanent injunction and reliefs of non-obstruction / restraint.

2. Perused the impugned order dated 04.10.2022 passed in Application filed below Exh. 5 in RCS No. 80/2022.

3. Mr. Kumbar is for the Defendants in the Suit. At the outset, he has drawn my attention to page Nos. 78 and 79 of the Writ Petition which is a map of the suit properties as also the revenue record of the suit properties. He would submit that the suit property for which the Respondents / Plaintiffs have approached the Trial Court seeking order of perpetual injunction under Order XXXIX, Rules 1 and 2 of the CPC. The suit property is Survey No. 106.

4. He would submit that Survey No. 106 has well on the property which is admittedly situated in the portion belonging to the Petitioners / Defendants. The said position can be clearly seen from page No. 78 of the Petition. He would submit that all along it has been the Defendant's case that Plaintiffs have been using the water from the well situated in the property of Survey No. 115. However in the year 2020-2021, the well in Survey No. 115 collapsed necessitating the Plaintiffs to use the water from the well situated on Survey No. 106 for cultivation in S.No. 115. He would submit that in that view of the matter, Plaintiffs approached the Trial Court seeking injunctive reliefs. Though several other submissions are also made by Mr. Kumbhar and also by Mr. Nikam on the rights of the parties as also availability of borewell and about the electricity meter, at this stage they will not be relevant. *Prima facie* it is seen that both Survey Nos. 106 and 115 are more or less equally divided between the parties and they both are tilling and cultivating their portions. Necessarily water would thus be required by both the parties for cultivation.

5. Revenue record which is at page No. 79 of the Petition though refers to a well, but it is seen that the same pertains to Survey No. 113. It is Mr. Kumbhar's submission that reference to Survey No. 113 in the revenue record corresponds to Survey No. 115, however the same shall be the subject matter of his evidence in the suit proceedings

and it shall be open to the Plaintiffs to lead evidence before the learned Trial Court on the issue of entitlement as injunction is sought on that basis. It is seen that the learned Trial Court has returned findings, rather *prima facie* findings while granting the order of injunction.

6. I have heard both the learned Advocates and perused the pleadings of the case. The question whether the well situated in Survey No. 106 is a jointly owned well (सामाईक बिहीर) along with electricity connection would be the real question before the learned Trial Court. Though *prima facie*, learned Trial Court has considered the consent letters etc, considering the fact that the parties before me are blood relatives belonging to the same family / clan, it shall be appropriate for the Petitioners / Defendants to lead appropriate evidence before the learned Trial Court in accordance with law to prove their case. In the meanwhile, therefore the impugned order dated 04.10.2022 shall remain in operation. However, it is clarified by this Court that this Court has not opined on any of the merits of the case. It is also clarified that the learned Trial Court while determining the suit proceedings in RCS No. 80 of 2022 shall not be influenced by any of the observations and findings returned in the impugned order dated 04.10.2022 and shall determine the Suit proceedings strictly on

its own merits and on the basis of the evidence led before the learned Trial Court and strictly in accordance with law.

7. With the above observations, Writ Petition is disposed.

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[ MILIND N. JADHAV, J. ]

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