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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 677 OF 2024
WITH
INTERIM APPLICATION NO. 14288 OF 2024
IN
SECOND APPEAL NO. 677 OF 2024**

Vimalbai Ramchandra Ware and Ors

.....Appellants

Vs.

Maruti Parbat Ware and anr

.....Respondents

Mr. Anukul Seth i/b Mr. Hitesh Shah for the appellants

CORAM : GAURI GODSE, J.

DATE : 13th NOVEMBER 2024

ORDER:

1. Heard learned counsel for the appellants. This second appeal is preferred by defendant nos. 1, 2, 4 and 5 challenging the concurrent judgments and decrees granting a decree for injunction restraining these defendants from obstructing the plaintiff from receiving his 1/3rd share in the ancestral well situated in the area allotted to defendant no. 3.

2. Learned counsel for the appellants submits that the suit well is

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exclusive property of defendant no. 3 and he has sold it to the present appellants. He submits that though the document was not produced in the trial Court, an application was filed before the first Appellate Court under Order XLI Rule 27 of Code of Civil Procedure, 1908 ('CPC') for producing the document by way of additional evidence. He submits that the first Appellate Court has erroneously dismissed the application on the ground that the appellants failed to make out a case that why they were unable to produce it in the trial Court. He submits that the document of the sale deed in favour of the appellants would indicate that the appellants have exclusive right over the suit well and the plaintiff is not entitled to seek any injunction against these appellants. He submits that the second appeal raises substantial questions of law on incorrect appreciation of evidence on record and erroneously rejecting the appellants' application to adduce additional evidence.

3. I have perused the judgments for considering the submissions made on behalf of the appellants. The appellants have filed a common written statement in the trial Court. They admitted the theory of partition in respect of the suit property between the plaintiff and defendant nos. 2 and 3. In the written statement, they also admit that the plaintiff had 1/3rd share in the water of ancestral well. The ground

to object grant of injunction is claimed by claiming exclusive ownership over the suit well. However, in the written statement, the appellants have not pleaded that defendant no. 3, through whom they claim exclusive ownership had any exclusive right over the suit well. Admittedly in the partition the plaintiff was granted 1/3rd share in the use of water in the well. Thus, both the Courts have concurrently held that the plaintiff is entitled to his 1/3rd share of water in the suit well.

4. So far as the arguments raised on application filed under Order XLI Rule 27 of CPC is concerned, the first Appellate Court has rejected the application on the ground that the appellants have failed to satisfy the parameters for adducing additional evidence as required under Order XLI Rule 27 of the CPC. Even otherwise, it was never the appellants' case that defendant no. 3 to whom they claim exclusive ownership had no exclusive right in respect of the suit well. The appellants admitted in the written statement that the plaintiff was allotted right to use 1/3rd share in the suit well. In view of the written statement of the appellants, the document sought to be relied upon before the first Appellate Court is not required to be examined any further. The appellants are not claiming any independent right. The exclusive right claimed by the appellants is through defendant no. 3.

Once it is admitted that defendant no. 3 had no exclusive right in the suit well, the production of the document would be redundant. Hence, the question of law raised on adducing additional evidence would not require any consideration by this Court.

5. In view of the concurrent findings of facts on the plaintiff's right, the grounds raised on behalf of the appellants would not require any consideration by this Court. I do not find any illegality or perversity in the reasons recorded by both the Courts.

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

7. In view of dismissal of second appeal, Interim Application No. 14288 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]