



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2214 OF 2024
(SHAMRAO DAMDUJI TIMANDE..VS.. SHALIK DAMDUJI TIMANDE)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.A.Chaudhari, Advocate for Petitioner.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 16, 2024.

1. Heard.
2. This writ petition is arising out of the concurrent findings recorded by the Court of Nyayadhikari, Gram Nayalaya, Sevagram in Regular Civil Suit No.19 of 2018 and District Judge, Wardha in Regular Civil Appeal No.62 of 2019 dismissing the suit for declaration and permanent injunction.
3. It is the case of the petitioner that the respondent is the real brother of the petitioner and he owns field Survey No.144, whereas the respondent owns agricultural field Survey No.140, situated at Mouza : Karanji (Kaji). It is the further case of the petitioner that the father of the petitioner was irrigating the field Survey No.140 prior to partition i.e. before 1975 and after partition the petitioner and the respondent jointly using the water of the Well situated in field Survey No.140 for irrigation of their field, without any dispute.

Subsequently, the partition of the remaining properties was carried out on 10/05/1995 and till January 2015 the petitioner was taking water from the Well in dispute for irrigation of the field Survey No.144 and on obstruction by the defendant the suit was filed.

4. The learned trial Court dismissed the suit recording the finding that in the Partition Deed of the year 1975, there is no recital about the joint use of the Well by the plaintiff and the defendant. It is further observed that field Survey No.144 was purchased by the plaintiff from his father and the same is not an ancestral property of the plaintiff, but it is a self-acquired property. It is further observed that the petitioner failed to prove that he has any right to take water from the Well in question.

5. Thus, after recording the detailed reasons, after appreciating the oral as well as documentary evidence, the learned trial Court dismissed the suit vide judgment and decree dated 26/04/2019, which was carried in appeal before the District Judge who maintained the order of the trial Court vide judgment and decree dated 06/07/2023.

6. The appellate Court, in addition to the reasons recorded by the trial Court, has observed that the right to take water from the Well is nothing but creation of the right in the Well which is relating to the immovable

property. It is further observed that the Partition Deed Exh.69 is an unregistered document which cannot be read in evidence to find out whether the petitioner is having $\frac{1}{2}$ share in the disputed Well situated in the land Survey No.140.

7. Thus, there are concurrent findings recorded by both the Courts below holding that the petitioner has no right in the disputed Well. In absence of any perversity or illegality pointed out, I am of the opinion that no interference is required.

8. Accordingly, the Writ Petition is **dismissed**. No order as to costs.

JUDGE