



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5458 OF 2024

1. Maruti S/o Apparao Disale,
Age: 59 years, Occu: Agril
R/o Jawalgaon, Tq: Barshi,
Dist: Solapur.
2. Gangabai W/o Maruti Disale,
Age: 54 years, Occu: Agril and Household,
R/o. Jawalgaon, Tq: Barshi,
Dist: Solapur
3. Prakash S/o Maruti Disale,
Age: 29 years, Occu: Agril,
R/o jawalgaon, Tq: Barshi,
Dist: Solapur

.....PETITIONERS

(Petitioners are Orig. Defendants.)

VERSUS

1. Kaka Sahebrao Kapase
Age: 44 years, Occu: Agril,
R/o Jawalgaon, Tq: Barshi,
Dist: Solapur.
2. Suresh S/o Apparao Disale,
Age: 56 years, Occu: Agril,
R/o jawalgaon, Tq: Barshi,
Dist: Solapur

.....RESPONDENTS

(Res. No. 1 is Ori. Plaintiff)

Mr. S. B. Choudhari, Advocate for the Petitioners
Mrs. S. V. Salunke, Advocate for Respondent no.1

CORAM : ROHIT W. JOSHI, J.

DATED : 10TH JULY, 2025

ORAL JUDGMENT :-

. The original defendant in Regular Civil Suit No.72 of 2016, pending on the file of the learned Joint Civil Judge, Junior Division, Tuljapur District Dharashiv, filed an application for amendment of written statement vide Exhibit 29 in Regular Civil Suit No.72 of 2016. The said application came to be rejected by the learned Trial Court vide order dated 20.02.2024, the present petition is filed challenging the said order. The dispute between the parties pertains to a well.

2. The plaintiff has filed a suit seeking declaration that he is owner of 0.025HR land in gut no.110 of village Kati, Tahsil Tuljapur, District Osmanabad, alongwith well, electric motor and pipeline in the said land and also for cancellation of sale deed dated 20.08.2025 executed by defendant no.4 in favour of defendant no.1 by virtue of which 1/3 right in well water in the land belonging to the plaintiff is transferred by the defendant no.4 in favour of defendant no.1 alongwith decree for perpetual injunction restraining the defendants from using the well water of the well located in the land owned by the plaintiff.

3. The defendant no.1 filed written statement in the said suit contending that the well in question was located in the land purchased by him from the defendant no.4. The total area of land bearing gut no.110 was 1.05HR, out of which, 0.025HR land is sold by the defendant no.4 to the plaintiff and 0.065HR land is sold to the defendant no.1. The defendant no.1 initially stated that the defendant no.4 has sold 1/3 right of the well water to the defendant no.1 and that this well according to defendant no.1 was located in the remaining land owned by the defendant no.4. The defendant no.1 by the proposed amendment contended that the well in which the right was sold by defendant no.4 to defendant no.1 was located in the land purchased by the plaintiff. However, he contended that the plaintiff had closed down the said well. The defendant no.1 also contends that he has constructed a well in his 0.65HR portion of land, which he has purchased from defendant no.4.

4. The learned Trial Court has rejected the application for amendment on the ground that the defendant no.1 was trying to withdraw admission made in the written statement.

5. Perusal of the written statement will indicate that it was the case of the defendant no.1 that he had right to 1/3 water in the well located in the land retained by the defendant no.4. However, subsequently, the defendant no.1 is trying to come up with a case that the well in which 1/3 share was sold out by the defendant no.4 was infact located in 0.025HR land sold by defendant no.4 to the plaintiff. He however contends that plaintiff did not complete the construction of well and had infact closed the said well.

6. The defendant no.1 states that he has constructed his own well and was drawing water from the said well.

7. Having perused the original written statement and the application for amendment, it is found that the defendant no.1 is rather now admitting that the well in which he had purchased 1/3 share from the defendant no.4 is located in the 0.025HR land purchased by the plaintiff. The earlier statement was that the well was located in the land retained by his vendor i.e. the defendant no.4. The statement that is made by way of proposed written statement enures to the benefit of the plaintiff in as much as the defendant no.4 is

admitting that the well in which he had purchased 1/3 right is located within the portion of land owned by the plaintiff. This well will not amount to withdrawal of admission rather now an admission has come that the well in question is located within the land owned by the plaintiff. Whether this well is closed down or not is a question of fact which will be proved during the course of evidence, correctness of otherwise of a statement cannot be judged while dealing with an application for amendment.

8. In that view of the matter, in the considered opinion of this Court, the impugned order deserves to be quashed and set aside and is accordingly quashed. The application for amendment filed by the petitioner vide Exhibit 29 in Regular Civil Suit No72 of 2013 pending on the file of the learned Joint Civil Judge, Junior Division, Tuljapur District Dharashiv is allowed.

9. Writ Petition is **disposed** of accordingly.

10. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)