

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6205 OF 2023
WITH
INTERIM APPLICATION NO.16870 OF 2023
IN
WRIT PETITION NO.6205 OF 2023

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Sanotsh Nivrutti Patil & Ors. ... Petitioners
V/s.
Vijay Pandurang Patil & Ors. ... Respondents

Mr. Sandeep Koregave for the petitioners/applicants.

Mr. Sudhir Sadavarte with Mr. Lad for respondent
Nos.7 to 11.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 20, 2025

P.C.:

INTERIM APPLICATION NO.16870 OF 2023

1. The interim application is for bringing heirs and legal representatives of the deceased applicant No.2 on record.
2. The interim application is allowed.
3. Necessary amendment to be carried out forthwith.

WRIT PETITION NO.6205 OF 2023

4. The petitioners filed a suit for partition and injunction restraining the defendants from constructing over one of the suit properties, which is the subject matter of the writ petition. The

Trial Court and the Appellate Court, by the impugned orders, rejected the petitioners' application after recording a finding that the well allegedly being constructed by the respondents is already in existence.

5. The findings of fact by the Trial Court and the Appellate Court are based on documentary and oral evidence, and this Court, in exercise of its writ jurisdiction under Article 226 or 227 of the Constitution of India, does not sit as an appellate forum to reappraise such findings unless there is an error apparent on the face of the record or a gross miscarriage of justice.

6. On perusal of the record, it is evident that the property over which the petitioners are alleging the construction of a well is agricultural land. It is a well-settled principle that agricultural operations often necessitate the construction of ancillary structures like wells, which are integral to the productive use of such land. The construction of a well in agricultural land cannot be presumed to alter the essential nature of the property but instead serves to enhance its value and utility. Hence, reliefs sought for preventing changes to the nature of the property cannot be extended to routine agricultural enhancements unless specific prejudice to the petitioners' rights is demonstrated.

7. Furthermore, the respondents have filed an undertaking before the Trial Court, explicitly stating that, should the petitioners' suit for partition be decreed, they shall not claim any equities arising from the construction of the well on the specific portion of the land. Such an undertaking, recorded on judicial

proceedings, binds the respondents under the principle of estoppel and provides a safeguard to the petitioners' interests in the event of a decree in their favor. The undertaking is accepted and shall be treated as binding.

8. It is further clarified that in the event the petitioners' suit is decreed, and the final decree passed by the Trial Court, based on the report of a Court Commissioner, records a finding that the portion of the land where the well is situated falls to the share of the petitioners, the respondents shall not be entitled to raise any objection on the grounds of equity or improvement.

9. The apprehensions expressed by the petitioners regarding a change in the nature of the property affecting their rights are unfounded, particularly in view of the respondents' undertaking. Hence, this Court finds no grounds for interference with the impugned orders. Accordingly, the writ petition is dismissed.

10. It is, however, clarified that the Trial Court shall decide the suit on its own merits, uninfluenced by the observations made by this Court or the Courts below in the impugned orders. The rights and equities of the parties shall be determined solely based on the evidence on record and in accordance with law.

(AMIT BORKAR, J.)