



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.349 OF 2021

Narayan s/o Ramnath Dusad Vs. Buldhana Zilla Parishad, through its CEO & Anr.

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

Court's or Judge's orders.

Shri R.G. Kavimandan, Advocate for appellant.
Ms S.W. Deshpande, Advocate for respondents.

CORAM : M.W. CHANDWANI, J.

DATE : 03.02.2025.

1. This second appeal has been filed against the judgment and decree dated 23.08.2016 passed by the Civil Judge Senior Division, Buldhana in Special Civil Suit No.86/1991 thereby partly decreeing the suit of the appellant and granting damages of Rs.35,000/- for damaging the well of the plaintiff situated in Block No.1517 of village Amdapur, Tehsil Chikhali, District Buldhana which has been confirmed by the first appellate Court.

2. The appellant/plaintiff is aggrieved by the decree of the trial Court for not granting the damages for 200 orange trees which dried due to non-supply of water since the well of the appellant got damaged due to faulty construction of water weir by the respondents.

3. The contention is that, once the trial Court has considered the fact that due to construction of the faulty water-weir the damage is caused to the well of the

appellant, the learned trial Court ought to have granted the compensation for damages to 200 orange trees which become dried for want of water and that happened just because the well was damaged due to faulty construction of the water-weir. It is also contended that PW7-Bhimrao Lokhande, an Assistant working in Horticulture Department has also specifically deposed about drying of 200 orange trees due to shortage of water, when he visited the field of the appellant in the year 1991. According to him, the trial Court as well as the appellate Court did not consider this aspect and therefore, the finding of the trial Court as well as the appellate Court is against the material on record and hence, is perverse.

4. *Per contra*, learned counsel appearing on behalf of the respondents vehemently submitted that the trial Court and the first appellate Court are justified in refusing to grant compensation on account of dried orange trees. She submitted that the trial Court and the appellate Court have considered the material available on record in proper perspective and therefore, the impugned judgments do not require interference and even the appeal may not be admitted since no substantial question of law arises.

5. Having heard the respective counsels and having gone through the impugned judgments, depositions and material available on record, it appears that the trial Court appreciated the fact that due to negligence of the

respondent, the well of the appellant got completely damaged. However, for want of proof of damages to the orange trees on account of non-supply of water and admission made by the witness of the appellant, the Court refused to grant compensation on account of damages to the orange trees. No doubt, PW7-Bhimrao Lokhande, Assistant working in Horticulture Department, has deposed that in the year 1991 when he visited the field of the appellant he found about 200 orange trees in dried condition for want of water. However, another witness of the plaintiff/appellant also visited the field of the appellant and noticed that the damage caused to the orange trees was for want of water but he specifically deposed in his cross-examination that he noticed the damage to those trees in the year 1990, whereas, the damage to the well was caused in the year 1991. Thus, in wake of the admission of the appellant witness coupled with the concurrent findings of the two Courts below, I find substance in the argument of the learned counsel for the respondents that no substantial question of law arises in this appeal. Hence, appeal stands dismissed.

JUDGE

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