

**R.C.S.NO.25/2022**Subhash  
Vs.  
Bhausahab & Ors**ORDER BELOW EXH.05**(Passed on 20<sup>th</sup> of February 2023)

This is an application filed by plaintiffs to restrain defendants from use of suit well and to restraint defendants from causing obstruction to use of water of suit well through separate pipeline.

**Plaintiff's case: -**

2. Suit well situated in Gat no.111 (in agriculture land of defendants) was partitioned between grandfathers of the plaintiff and defendants. The suit well was equally divided between grandfather of the plaintiff and defendants. After their death, the plaintiff and defendants have equal share in the suit well. The plaintiff is having separate electricity connection in his name in respect of the suit well. However, defendants are obstructing the plaintiff from use of suit well. Hence, he prayed to restraint defendants from causing obstruction to use of suit well and to use of water of suit well through separate pipeline.

**Defendants case: -**

3. Defendants filed their written statement cum say to the present application vide Exh.18. Defendants submitted that, partition between grandfather of the plaintiff and defendants had taken place in the year of 1938. In consolidation scheme, gat no.112 was allotted to the plaintiff's agriculture land and gat no.111 was allotted to

defendant's agriculture land. Since partition, the plaintiff and defendant are in possession and cultivating their own land as per partition. In the year of 1959, father of defendants namely Dhondiba had dug a well in his agriculture land bearing gat no.111. The plaintiff has no concern with the suit well as it has been dug by defendants in 1959 and partition between their grandfather had been taken in place in 1938. Hence, defendants prayed to reject the application.

4. Heard learned advocate for both sides. Perused the record and documents.

5. On hearing and on perusal of record, following points arise for my determination, on which I have recorded my findings for the reasons stated there under:-

<b><u>Sr. No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Whether plaintiffs have <i>prima facie</i> case in their favour?	No
2.	Whether the balance of convenience lies in favour of plaintiffs?	No
3.	Whether plaintiffs will suffer irreparable laws if the order of temporary injunction is not granted in their favour?	No
4.	What order?	The application is rejected.

### **REASONS**

6. In order to entitle for relief of temporary injunction, it is on the part of plaintiffs to make out the *prima facie* case, to prove balance of convenience lies in his favour and he would

cause irreparable loss, if temporary injunction would not be granted in his favour. These are the three essential pillars to get relief of temporary injunction. If any one of those are not proved, then the relief of temporary injunction cannot be granted.

**As to point No.1 to 3 :-**

7. As the point no.1 to 3 are interlinked with each other, they are taken into consideration simultaneously.

8. I have perused the mutation extract of suit property which is filed by the plaintiff alongwith list of documents at Exh.3. It appears from the mutation entry no.1222 that, partition between grandfathers of the plaintiff and defendant had taken place in the year of 1938. There is nothing mentioned in the said mutation entry regarding suit well. Moreover, on perusal of old survey no. 34-1A it appears that, suit well was dug in the year of 1959. Therefore, it raises doubt regarding partition of the suit well in 1938.

9. However, the plaintiff filed electric light bill alongwith list of documents a Exh.3. On bare perusal of said electricity bill, regarding which well said bill was generated, it cannot be ascertained. Burden is upon the plaintiff to prove that, said light bill is generated for the suit well only, and that can be determined only after evaluation of all evidence available on record.

10. The plaintiff has filed affidavit of one Balasaheb Chandrakant Akolkar who is allegedly cousin of the plaintiff and defendants. He stated in his affidavit that, suit well is

joint and common property of the plaintiff and defendants. However, the documents filed by the plaintiff shows that, partition was taken place between grandfathers of the plaintiff and defendants in 1938, and suit well was dug in 1959. Therefore, at this stage I am of the considered opinion that, extract of the documents filed by the plaintiff will prevail over the affidavit of Balasaheb.

11. In the light of aforesaid discussion, the plaintiff failed to make out prima facie case in his favour. The balance of convenience does not tilt in favour of the plaintiff, and therefore, he will not suffer irreparable loss if temporary injunction will not be granted in his favour. Hence, I answer point no.1 to 3 in negative and recorded my findings thereon accordingly. In answer to point no.4, I pass the following order.

### **ORDER**

1. The application is rejected.
2. Parties are directed to proceed with the suit expeditiously.
3. Cost shall follow the event.

(Dictated and pronounced in open Court.)

Date :20.02.2023

Place: Pathardi

**[Mayursingh D. Gautam]**  
2<sup>nd</sup> Jt. Civil Judge Jr. Div.,  
Pathardi.

