

MHAU110008302024

**ORDER BELOW EXH.05**

Present suit for declaration and injunction is filed against defendants. Defendant no.1 is father of defendant no.2 and 3 while husband of defendant no.4. Plaintiff filed present application under O.39, R.1 and 2 r/w Sec.151 of the Code of Civil Procedure, 1908 to restrain defendants from causing obstruction and interference in peaceful use and enjoyment and possession of applicants half share in water of the Disputed well situated in 1R pot-kharab land of plaintiff near bank of Babra River, towards 57R land in Gut no.455 at Village Pal, Tal. Phulambri, Dis. Chhatrapati Sambhaji Nagar (hereinafter referred as 'disputed well') till final disposal of suit.

Contentions of Plaintiff:

2. Plaintiff came with the case that disputed well is constructed in 1R pot-kharab land which is near to bank of Babra river. In 2007, 1H.50R land, in Gut no.388, of defendants was acquired for Wakod Medium Project and permission for 18 years was given to defendants to use water of said Wakod Medium Project Talav upon terms and conditions. In 2014-15, defendant no.1 went to plaintiff and proposed to dug disputed well near river over plaintiff's land. Plaintiff contributed Rs.2,50,000/- towards construction of disputed well. Plaintiff and defendant no.1 agreed to take half of share each and during water shortage they will take water for equal days. Accordingly, both installed their separate electric motor pump to take water equally from disputed well. However, in 2023, there was less rain and due to water shortage, defendants who having more land to irrigate, for which defendants removed pump of plaintiff from disputed well and denied half share of plaintiff in disputed well. Plaintiff further

stated that defendants falsely filed letter to Tahsil Office to record name of defendant no.1 in revenue record for disputed well and also prepared false panchnama in collusion of Talathi and it also does not bear sign and seal of Circle Officer. Having strong influence of defendants over police, who issued notice to Gopalsing i.e. son of applicant to not to take Disputed well-water. Hence, plaintiff filed present suit and prayed to allow present application.

Documents filed by Plaintiffs:

3. Plaintiff filed 7/12 extract of Gut no.455, written complaint dated 30/05/2024 filed by Anju Gopalsing Rajput, water permission taken by defendant no.1, Panchnama dated 04/07/2024 prepared by Talathi, affidavit of adjacent land owner Viz, Vitthal Chhagan Jonwal.

Contentions of Defendant no.1 to 4:

4. Against this, defendant no.1 to 4 appeared and filed their WS and thereby denied claim of plaintiff stating that Disputed well is dug 50 to 60 ft. distance from land of plaintiff in Gut no.455. therefore, plaintiff does not have any right over disputed well nor he is related anyway with said Disputed well. Defendants also denied that plaintiff gave Rs.2,50,000/- for construction of said Disputed well. In fact, as per defendants, they tried to get required permission from Government for digging said disputed well, however, not able to obtained it as said land was near irrigation project. Defendants denied that said Disputed well is dug upon plaintiff's land, as said disputed well cum shivdi dug in the river bed of which defendants cannot claim legally, therefore, right of plaintiff therein does not arise. Defendants further stated that plaintiff failed to make State as Party to present suit as State is real owner. It is exclusive right of State to carry out proceeding against these defendants, however, plaintiff cannot take undue advantage of the same. Lastly, defendants stated that plaintiff is trying to dispossess defendants from taking benefits of said disputed well as there are other wells of villagers there but no one got water as much of defendants, therefore,

plaintiffs threatening defendants and demanding water without having any right, title or interest in disputed well. Hence, he prayed to reject said application and dismiss suit with costs.

Documents filed by Defendants:

5. In their support, defendants filed on record digital copy of 7/12 extract of Gut no.388 and Form No.8A and also photocopies of their application filed before, SDO, Tahsildar & Talathi, permission letter dated 21/11/2007, Certificate issued for acquiring land for Wakod Medium Project, light bill, receipt, complaint dated 30/05/2024 registered against plaintiff and his sons and letter dated 04/07/2024 to Tahsildar. Defendants also filed affidavits of two persons Viz, Chandarsing Ratansing Rajput and Kailas Dagdu Jadhav both claiming adjacent land owners.

6. After going through rival contentions, following points arise for my determination and my findings are as under for the reasons stated hereinafter.

Sr. No.	Points	Findings
1.	Does the plaintiff prove that he has prima facie case?	No.
2.	Does the plaintiff prove that balance of convenience lies in his favour?	No.
3.	Does the plaintiff prove that if injunction not granted, he will suffer irreparable loss?	No.
4.	What order?	Temporary Injunction is rejected.

REASONS

As to point no.1 to 4:

7. As points are interlinked hence, to avoid repetition I have taken them together. Firstly, plaintiff came with the case here that disputed well is situated

within his 1R pot-kharab land and plaintiff and defendants dug disputed well for which plaintiff allowed defendants to dig disputed well upon his land by contributing Rs.2,50,000/- with defendants. He stated that defendants having money power and political influence, use it and prepared false panchnama and also issued notice through police upon son of plaintiff, to not to take water from disputed well though plaintiff having half share in disputed well-water. However, defendants straightaway denied the same stating disputed well is not dug upon plaintiff's land and plaintiff never contributed for the same.

Arguments advanced by plaintiffs:

8. Ld. Adv. S.S. Gaikwad for plaintiff argued that plaintiff has filed on record, 7/12 extracts on record to show his land in Gut no.455 however, defendants failed to show their land in said gut. He further argued that plaintiff gave his land as disputed well as contributed Rs.2,50,000/- for constructing disputed well as proposed by defendants. Since 2014-15, plaintiff is using disputed well water for irrigating his crop in Gut no.455, as agreed half of share of plaintiff and defendants in disputed well. In 2023 due to shortage of water, defendants started obstructing plaintiff from taking water from disputed well. Defendants removed motor pump of plaintiff from disputed well and denied share of plaintiff in disputed well water. It is argued that defendants failed to file any document in his support to show, disputed well is of defendants as permission was granted to take water from Talav of Wakod Medium Project and not to dig disputed well. He also argued that panchnama prepared is at instance of defendants as Talathi mentioned that defendants shown all required documents and having permission to dig disputed well which is false and defendants will not able to take its benefit. Therefore, prima facie case and balance of convenience is in favour of plaintiff and if interim injunction not granted, plaintiff will suffer irreparable loss. On the other hand, by giving interim protection to the plaintiff, there will be no loss to defendants and prayed to allow present application.

Arguments advanced by defendants:

9. Ld. Adv. N.B. Sonawane argued on behalf of defendants that plaintiff is not related with disputed well as it is dug at a distance of 50 to 60 ft from land of plaintiff in Gut no.455. He further argued that disputed well is dug in river bank and entire expenses borne by defendants, plaintiff had not paid any amount towards its construction. He also argued that defendants never gave proposal to plaintiff to dug disputed well in his land nor taken any money for construction of disputed well and they never agreed to give half share to plaintiff as alleged. He argued that from documents filed on record it seems that plaintiff also not filed any documents to show his possession over said disputed well. It is argued that considering panchnama filed on record by plaintiff, it is clear that said disputed well is of defendants and plaintiff not having any right over it. He lastly argued that plaintiff failed to establish his case prima facie as disputed well as balance of convenience is clearly in favour of defendants. Further, if interim injunction granted in favour of plaintiff, then by taking undue advantage of said order, plaintiff will take forcible possession of disputed well and dispossess defendants. Hence, it is defendants who will suffer irreparable loss than plaintiffs. Hence, he prayed to reject present application.

10. After going through pleadings of both the parties and documents filed by them, this being primary stage, have to consider whether plaintiff able to establish his case prima facie. In that regard, plaintiff claiming half share in disputed well. However, in that regard, he filed 7/12 extract showing he is possession of 57R and 1R pot-kharab land in Gut no.455. Here, a thing to consider is that defendants not denied that disputed well is in Gut no.455, defendants denied that well is not in plaintiff's land. In respect of defendant having any land in Gut no.455, defendant failed to file document showing disputed well constructed upon his land. In fact from documents filed on record about existence of disputed well, prima facie shows that disputed well is in Babra

river. 7/12 extract of Gut no.455 is silent on point of disputed well. Defendants agreed that they dug well in the river without necessary permission though, denied plaintiff's equal share therein.

11. Further, plaintiff failed to file any document on record which prima facie shows his share in disputed well even failed to file document towards alleged payment of Rs.2,50,000/- to defendants so also failed to file document in his support alleging he installed motor pump and was taking water from disputed well therefore, it can be properly decide after taking evidence of both the parties in that regard. Plaintiff filed complaint on record as well as affidavit of Vitthal Jonwal. However, considering complaint filed by Anju against defendants and notice issued to plaintiffs from stopping using water from disputed well primarily shows that there are disputes amongst plaintiff and defendants and cross-complaints are filed between them, from which nothing can make out at this stage.

12. Coming to affidavit filed by plaintiff as well as defendants, going through them, there is nothing on record presently to show that Vitthal, Charansing and Kailas are adjacent land owners, so also without undergoing cross-examination test, such affidavit cannot be relied blindly at this juncture. Therefore, it is of no use to both the parties.

13. After considering arguments of both the parties who were arguing on the point of Shivdi or well, I am of the opinion that going through pleadings of both the parties, it seems that both agreed existence of well. Therefore, argument on point of shivdi not considered at this stage in absence of specific evidence in that regard. Further, permission obtained by defendants in 21/11/2007 clearly speaks about taking water from project itself and not spoke about constructing well in the river, defendants himself came with the case that they have not obtained necessary permissions from Government. In such circumstance, further defendants also failed to file document to show he constructed well and borne

expenses alone. Further, no documents on record to show defendants having land in Gut no.455 as their land is in Gut no.388. Though, it is admitted by both the parties that defendants have taken pipelines from disputed well to supply water to his land in Gut no.388. Plaintiff came with the case that they were sharing equally water of disputed well through their separate pump since 2015, however, nothing on record to support his claim. However, defendant denied of sharing well water and installation of pump by plaintiffs, which at this stage in absence of evidence, remains with fact that defendant have installed his pump over disputed well.

14. Considering aforesaid discussion, it seems that plaintiff failed to establish his case prima facie as burden was upon plaintiff to show prima facie case exists in his favour. In present facts and circumstances, I am of the opinion that at this stage, considering balance of convenience, it is admitted fact that defendants have made pipeline from Gut no.455 to Gut no.388 to supply water from disputed well which itself shows that balance of convenience is in favour of defendants at this primary stage. Therefore, at this stage, I answer point no.1 and 2 in negative and proceeding to decide point no.3 irreparable loss.

15. After going through material placed on record, it seems that plaintiff filed suit to declare his half share in disputed well alongwith perpetual injunction to restrain defendants from obstructing his possession over sharing water equally with defendant no.1. Going through minutely, it seems that plaintiff has prayed final order at this interim stage and however, the same cannot be allowed as plaintiff failed to establish prima facie case in his favour. So also balance of convenience is in favour of defendants. Further, plaintiff failed to show as to what irreparable loss he sustained, if injunction not granted at this stage, as damages can be quantified and cannot be stated as irreparable loss. Hence, I answer point no.3 in negative and As I have held that plaintiff failed to show prima facie case and balance of convenience in his favour, injunction cannot be granted when plaintiff failed to show his prima facie possession over suit property. Therefore,

considering documents filed on record, balance of convenience seems in favour of defendants, hence, if injunction granted at this stage, irreparable injury will be caused to defendants than the plaintiff. Therefore, at this stage, I answer this also in negative.

16. As I hold that plaintiff failed to show his prima facie possession over disputed well. Moreover, present suit is filed for declaration and injunction only therefore, considering its limited scope, at this stage nothing to show that balance of convenience tilts in favour of plaintiff. In view of above discussion, I answer point Nos. 1 to 3 in negative and in answer to point no.4, I pass the following order:

ORDER

1. Application is rejected.
2. Costs shall follow the decision of the suit.

Date: 07/02/2025

(V.V. Raojadeja)
Civil Judge Junior Division
Phulambri.

CERTIFICATE

affirm that the contents of this P.D.F. File order are same, word to word,
as per the original order.

Name of the Stenographer	: Shir. Y. B. Mirdhe,
Name of the Court	: C.J.J.D. & J.M.F.C., Phulambri
Date of order	: 07.02.2025
Original copy of order signed by the presiding officer on	: 07.02.2025
PDF copy of order uploaded on	: 10.02.2025