

ORDER BELOW EXH. 5(Passed on 16th June, 2016)

01. Perused application. The defendant has filed his written statement at Exh. 16 and adopted the same as reply to this application by filing pursis Exh. 18. He has admitted that, there is no dispute about the survey number or area of the property but the dispute is in respect of well. The plaintiff has no half share in the disputed well. The original owner has not given the right in the well to the plaintiff. The disputed well is entirely in his share and he is sole owner and possessor of said well. The defendant has pleaded that after purchasing the land he has constructed said well from his own money and made his land irrigated from the water of said well. The plaintiff has no concern with said disputed well. The plaintiff is trying to take disadvantage of the entry of half share taken in the sale deed and thereby obstructing the defendant from using the well. On 03.07.2015 no any revenue officer visited the spot. Circle Inspector, Madansuri called him and obtained his signature on the blank paper. Thereafter, false panchnama was prepared and it was produced before the Tahsildar. On 25.02.2016 Nayab Tahsildar visited the spot and prepared the panchnama in presence of panch witnesses. In that panchnama it is mentioned that the disputed well is constructed by defendant. The plaintiff has filed false suit therefore, the suit is liable to be dismissed.

02. Considering the rival pleadings of both parties, following

points arise for my determination and I have recorded my findings against them for the reasons discussed below :-

POINTS

FINDINGS

1.	Whether the plaintiff has prima-facie case ? <u>In affirmative.</u>
2.	Whether balance of convenience lies in favour of plaintiff ? <u>In affirmative.</u>
3.	Whether the plaintiff will suffer an irreparable loss if an injunction as prayed is not granted in his favour ? <u>In affirmative.</u>
4.	What order ? <u>Application allowed.</u>

REASONS

Points No. 1 to 4 :-

03. Heard learned counsel for both parties at considerable length. Perused case record. The plaintiff has filed this suit for perpetual injunction. The plaintiff has pleaded that he has half share in the disputed well but the defendant obstructing him from taking benefit of his half share in the well. The defendant has pleaded that said well belongs to him and he is sole owner and possessor of said well. In support of their rival contentions both the parties have produced documents. On perusal of 7/12 extract filed at Exh.8, it reveals that the plaintiff is owner of 1.21 HR land of survey No. 35/A, Exh. 9 is the mutation entry recorded in the name of plaintiff on the basis of sale deed

dated 08.07.2002. It appears that the plaintiff has purchased the above land from one Kaubai Vishwanath Khobre. The plaintiff has filed original sale deed on record. On perusal of the same, it reveals that the plaintiff purchased 1.21 HR land survey No. 35-A of village Nadihattarga for a consideration of Rs. 2,10,000/-. In the sale deed it is specifically mentioned that there is well in the land sold to plaintiff and the seller has sold the land along with her half share in the well. So, this fact shows that the plaintiff has purchased the land along with half share of his predecessor in title in the disputed well. The plaintiff has also filed certified copy of registered partition deed dated 05.07.1983 showing that in the partition of joint family property of said Kaubai, she has received 3 acre land of survey No. 35/A in the partition along with half share in the disputed well. Therefore, it is clear that the predecessor in title of plaintiff had also half share in the disputed well and she sold the land along with her share in the disputed well to the plaintiff by registered sale deed. The plaintiff has also filed electric bills on record showing that the electric connection of 7.5 HP for the use of agricultural purpose is granted in his favour. As against this, the defendant has filed only panchnama dated 25.02.2016 but he has not filed any other document to show that he is owner and possessor of disputed well. It is pertinent to note that in the sale deed of defendant, there is no mention that the land of survey No. 35/A area 1.43 HR is sold to him along with the well. There is no reference of well in the sale deed of defendant. Considering this documentary evidence on record, I am satisfied that the plaintiff proved that he has prima facie case, balance of convenience lies in his

favour and he will suffer an irreparable loss if injunction as prayed is not granted in his favour. In the result, I answered points No. 1 to 3 in affirmative. Therefore, application deserves to be allowed. Hence this order.

ORDER

1. Application is allowed.
2. The defendant is hereby restrained from interfering or obstructing the plaintiff from the enjoyment of half share in the disputed well situated in survey No.35/A till final disposal of the suit.
3. Costs in main cause.

Nilanga.
Dated : 16.06.2016.

Sd/-
(R. N. Barad)
Civil Judge Senior Division,
Nilanga.