

R.C.S.No.287/2013
Ashok/Shahaji

ORDER BELOW EXH.52

1) The plaintiff in the counter claim namely Shahaji Agatrao Dange has filed application under Order 39 Rule 1 & 2 of Civil Procedure Code. The plaintiff has prayed for restraining the defendants from causing obstruction to the plaintiffs peaceful usage of disputed well water and for restraining defendants from destroying the bandh. The learned advocate on behalf of defendants in the counter claim have filed say vide Exh.72. They have denied the contentions of plaintiff in the counter claim. The detailed facts and the documents filed on record have been discussed along with the reasoning for the sake of convenience and to avoid repetition.

2) Following points arise for my determination, to which I have recorded my findings for the reasons to follow thereon.

Sr.No	POINTS	FINDINGS
1	Whether plaintiff proves prima facie case in his favour ?	In the negative
2	Whether the balance of convenience lies in favour of plaintiff?	In the negative
3	Whether the plaintiff would suffer irreparable loss if injunction is refused to him ?	In the negative
4	What order ?	As per final order

REASONS

3) Heard learned advocate Shri. D.S.Nikalje on behalf of plaintiff and learned advocate Shri. A.S.Jagtap on behalf of defendant No.1 to 3 in the counter claim. Perused all the documents on record.

As to Point No. 1 to 3:

4) The plaintiff in the counter claim has come with a case that the property admeasuring 40 R in Gat no. 142 (more particularly described in para 2 of the counter claim) is owned by the plaintiff. It is contended that the disputed well is situated in the said property of plaintiff Shahaji. It is specifically contended that the property adm. 44 R in Gat No.142 was owned by plaintiff. Towards eastern side there is Ashok Bagal, towards- western side Babasaheb Dange, towards southern side-Lavhe, Tq. Madha Shiv and towards northern side is public road. In the year 2001, for the operation of the son of plaintiff, the property adm. 04 R was given to Balasaheb Bagal for consideration of Rs. 20,000/- by registered sale-deed bearing No. 2800/2001. The said property was actually given to him. It is specifically contended that in the year 2002-2003, plaintiff Shahaji had constructed the disputed well in his property through defendant No.2 Vijay Bagal as mortgage and it was to be re-conveyed after repayment of the money taken from him.

5) It is the contention of plaintiff that, Balasaheb Bagal executed sale deed No.1122/2003 of the purchased 04 R area in favour of Ashok Bagal on 20.06.2003. In the said sale deed, both of

them fraudulently and falsely mentioned the existence of the disputed well. Thus, fraudulently got executed the sale-deed of 04 R area along with false mention about the disputed well in it. Thereafter, Ashok Bagal and Balasaheb Bagal fraudulently executed correction deed in respect of the boundaries of 04R land purchased from plaintiff Shahaji Dange. By way of the false and bogus correction deed, the applicants have tried to show that the disputed well has also been purchased from Shahaji Dange.

6) On the other hand, it is contended by the defendants that in the year 2001 the plaintiff Shahaji had sold 04 R area to Balasaheb Bagal. Thereafter, it is contended that the disputed well was constructed in the said property by the defendant. The defendants have done RCC construction over the said well by spending almost Rs. 5,00,000/-. Accordingly, the name of defendants have been entered to the 7/12 extract of the property for 8 anna share each. It is contended that the plaintiff Shahaji has not carried out measurements through appropriate authority.

7) It is specifically contended that the defendant Ashok and Vijay Bagal have $\frac{1}{2}$ share each in the disputed well situated in 85 R out of Gat No.142. Defendant No.1 has purchased the property adm. 81 R. from Kisan Lungase and Tukaram Lungse by sale deed in the year 2002. The mutation entry No.431 in this regards is filed on record vide Exh. 65. Thereafter, in the year 2003 defendant Ashok purchased the 04 R area from Balasaheb Bagal along with $\frac{1}{2}$ share in the disputed well by registered sale deed

1122/2003 (mutation entry No.477). It is contended that, the property of Shahaji Dange adm. 40R is adjacent to the suit property in the plaint. Plaintiff Shahaji Dange irrigates his land by river water. It is specifically contended that he is causing obstruction to the defendant's right to use the well the water.

8) At this juncture, it is important to mention that by order below Exh.5 dated 06/05/2013, the plaintiff Shahaji Dange has been restrained from causing obstruction to the defendant's peaceful usage of disputed well water situated in Gat No.142. The present plaintiff in the counter claim has contended that he is the owner of the disputed well and he has been using the disputed well water. Now the present plaintiff Shahaji Dange has sought to restrain the defendants from obstructing him to use the disputed well water.

9) The plaintiff Shahaji has claimed ownership over the disputed well in Gat No.142. In support of it he has relied upon the measurement map filed on record. The learned advocate on behalf of plaintiff submitted that the disputed well is situated in the 40 R. area of plaintiff Shahaji. The plaintiff has alleged that the defendant has fraudulently purchased the share in the well water by executing sale deed. The plaintiff has also alleged that the defendant in collusion with the revenue officers has purchased 04 R. area from plaintiff Shahaji Dange. It is contended that the said transaction is illegal and not permissible as per law. It is contended that the sale consideration of Rs. 20,000/- was agreed to be repaid to Balasaheb Bagal in return of 04 R. area, which

were taken to meet the medical expenses of son of Shahaji.

10) On the other hand, the defendants in the counter claim have filed on record electricity bill of the year 2006 to 2010 which shows the name of defendants as consumer. The defendants have also filed copy of registered sale deed bearing No.1122/2003 executed by Balasaheb Bagal in favour of defendant No.1 Ashok in respect of area adm. 04 R. The 7/12 extract filed at Exh.07 shows that the name of defendants and the present plaintiff have been entered to the 7/12 extract of Gat No.142 for their respective shares. It reflects that the disputed well has been entered in the names of Ashok Bagal and Vijay Bagal for 8 anna share each. The plaintiff has also filed the copy of correction deed executed by Ashok Bagal and Balasaheb Bagal in respect of the boundaries of 04 R. area purchased by Ashok Bagal.

11) The copy of sale deed executed by Shahaji Dange in favour of Balasaheb Bagal has been filed vide list Exh.57 (No.2800/2001). A perusal of the same, it appears that plaintiff Shahaji Dange has sold property adm. 04 R to Balasaheb Bagal for consideration of Rs. 20,000/-. It also mentions about handing over possession before execution of the sale deed. It is important to mention that there is no reference about well in the said 04 R. portion when the said portion was sold by plaintiff Shahaji Dange. But the sale deed bearing No.1122/2003 executed by Balasaheb in favour of Ashok Bagal in respect of the said 04 R. portion has reference of a well in it. By way of said sale deed ½ share in the well was also sold by defendant Balasaheb Bagal in

favour of defendant No.1 Ashok Bagal.

12) It is specifically contended by the present defendants that when Balasaheb Bagal had purchased the 04 R. portion from plaintiff Shahaji, at that time there was no well in the said portion. It is specifically contended that the disputed well has been constructed by the defendants in the year 2002. In support of said contentions, they have filed on record along with list Exh.21 the electricity bills and along with list Exh.28 copy of attendance dairy of workers for construction of well (dated 29/07/2002). Furthermore, on the basis of the registered sale deed in favour of Ashok Bagal, mutation entry No. 477 has been confirmed and the name of defendant Ashok Bagal has been entered in the owner's column of the 7/12 extract at Exh.07. Further, his name has also been entered in the other rights column of the 7/12 extract of Gat No.142 for 8 anna share in the well.

13) It is important to mention that there is no entry in respect of well in the name of plaintiff Shahaji Dange. The electricity connection for the motor over the disputed well also appears to be in the name of Ashok Bagal from the year 2006 to 2010. Thus, it prima facie shows that there is no document to show that the disputed well is owned by the present plaintiff Shahaji Dange. The plaintiff has not filed any affidavit of nearby land owners to prima facie support that the disputed well has been constructed by him. The plaintiff Shahaji has contended that the sale deed dated 05/12/2001 was in fact a mortgage deed

with a condition to repurchase the said 4R portion. However, on perusal of the said sale deed filed along with list Exh.57, it appears that there is no mention about any such condition or any reference showing the said document to be a mortgage deed. Whether the same was an mortgage or out and out sale would be certainly decided on merits. But at this stage it is only important to consider whether the plaintiff Shahaji has prima facie shown that the disputed well is constructed and owned by him.

14) The defendants have filed on record the copy of judgment of Additional District Collector, Osmanabad in R.T.S. No.59/45/2016. The said appeal has been allowed and the order passed by Sub-Divisional Officer, Bhoom is set-aside and it is held that the sale deed in respect of 04R area is not against the provisions of the Consolidation Act and the mutation entry No.430 was confirmed in favour of the present defendants. There is no copy on record to show that this decision of Additional District Collector has been set aside. Moreover, there is also no document to show that the plaintiff Shahaji had challenged the entries made to the 7/12 extract in respect of disputed well since 2006. The plaintiff has only relied upon the measurement map to show that the disputed well is situated in his property. But the said map cannot be only sufficient to prima facie hold that the disputed well is situated in the property of plaintiff and is constructed by him. There is prima facie a registered sale deed in favour of defendant Ashok and the entries to the 7x12 extract showing the disputed well in the names of defendants. The plaintiff in the counter claim has also not challenged the sale

deed in favour of Balasaheb Bagal and Ashok Bagal. The correction deed between them is also not challenged.

15) Considering the contentions and all the documents on record, prima facie the plaintiff has failed to show that the disputed well is constructed and owned by him. Further, there is no prima facie material on record to show that the defendants are destroying the bandh/boundaries. Hence, in view of the existence of restraining order against plaintiff Shahaji and no prima facie case proved by the plaintiff Shahaji, in my opinion, balance of convenience also does not lie in favour of Shahaji. Consequently, no irreparable loss would be caused to the plaintiff Shahaji, if injunction is refused. The order of this court below Exh.5 restraining plaintiff from obstructing the defendant's peaceful usage of the disputed well water has not been set aside till today. On the basis of the observations made in the order below Exh.5 and the documents such as prima facie entries in the 7/12 extract and sale deed in favour of defendant Ashok, granting injunction against the defendants would certainly cause irreparable loss to the present defendants and would also lead to complications in the present suit. Hence, I answer point no. 1 to 3 in the negative and pass the following order:

ORDER

- 1) The application is rejected.
- 2) No order as to costs.

Date:- 17/07/2017

Sd/-
(Smt. D.S.Chothe)
2nd Jt.Civil Judge J.D.,Paranda.