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	Exh	:	

IN THE COURT OF THE DISTRICT JUDGE WAI, AT WAI
(Presided over by D.B.Mane, District Judge-2)

Reg. Civil Appeal No.496 of 2023

Vitthal Gangaram Pisal

Age:69, Occ.: Labour

R/o Vyajwadi, Taluka Wai

District Satara

Appellant

(Original Defendant)

Vs.

Mahadev Gangaram Pisal

Age:74, Occ.: Agriculture

R/o Vyajwadi, Taluka Wai

District Satara

Respondent

(Original Plaintiff)

Claim: An Appeal under Section 96 read with Order 41 of the Code of Civil Procedure.

Appearance :

For Appellant

For Respondent

: Adv. Shri. S.D.Khamkar

: Adv. Shri. S.P Thite

JUDGMENT
(Delivered on 07.03.2026)

Aggrieved and dissatisfied by the judgment and decree dated 06.06.2023 in Reg.C.S. No.84/2019 passed by the Ld. Civil Judge, (J.D.) Wai, the appellant / original defendant has preferred this appeal. The original plaintiff has also filed cross-objection vide Exh.11 and challenged the finding on issue No.1. (For the sake of convenience the parties are described by their nomenclature in the original suit as ‘the plaintiff and defendant’.)

2. Brief facts giving rise to the present appeal are as under:

A] The plaintiff and defendant are the real brothers. Their ancestral properties are partly partitioned in the year 1976 and the remaining properties have been partitioned on 04.11.2000 in presence of witnesses. The fields Gat No.335 area 67 R and Gat No. 352 area 17 R situated at Vyajwadi, Taluka Wai District Satara with one well each, in both Gat numbers are in possession of the plaintiff and defendant. The said wells are in use. The said wells, electric motor, pipeline, sprinkler set etc., is kept common between the plaintiff and defendant. The electric bills of the motor pump-sets are being paid by the plaintiff and defendant.

B] The electric connection on the well in Gat No.335 is in the name of their father and the plaintiff is paying the electricity bills on this well. The electric connection on the well in Gat No.352 is in the name of the defendant (for convenience) and the defendant is paying the electricity bills on that well. However, both the plaintiff and defendant are fetching water from both the wells as per their requirement to irrigate their lands by their respective share.

C] Now, the differences arose between the plaintiff and defendant on the ground of turn of fetching water. The defendant started to withdraw the fuse which resulting into inconvenience to the plaintiff and irregularity in water supply to his crops. So, the meeting was held in presence of the villagers about the turn of fetching water from both the wells. However, the attempt turned futile. Hence, the plaintiff filed suit for fixing the turn of fetching water by the plaintiff and defendant from the wells situated in Gat Nos. 335 and 352.

3. The defendant filed written statement vide Exh.26. The defendant admitted the fact of relationship, existence of wells in Gat Nos. 335 and 352. The defendant also admitted that both the wells are ancestral and common wells and in the partition of the agriculture lands, both the wells have been kept in common between him and the plaintiff. It is further assertion

of the defendant that prior to 4 to 5 years, 5 HP electric motor pump-set is installed on the well in Gat No.335 and there is 7.5 HP motor pump-set installed on the well in Gat No.352. Both the electric motors have been installed by the defendant and the defendant is paying the electricity bills. However, the defendant never obstructed to the plaintiff for fetching water from both the wells.

It is further contended that the plaintiff used to pick up the quarrel unnecessarily on the ground of fetching water from the wells. The defendant has decided to lay separate pipeline to take water from the well in Gat No.352, however, the plaintiff has caused obstruction. The plaintiff has source of water from the well in Gat No.661, however, the plaintiff has suppressed the said fact and started to lay new pipeline from the suit well to the field Gat No.661. The plaintiff has also tried to create third party interest in the said well. To resolve this issue, there was discussion between the plaintiff and defendant in presence of respectable persons in the village and the document of rotation / turn of fetching water was executed. However, the plaintiff didn't sign that document. The efforts were made to settle the dispute by approaching before Litigation Free Committee, however, the efforts turned futile and the plaintiff has filed the false suit, so it be dismissed.

4. Considering rival pleadings of both the parties, the

Ld. Trial Court framed issues vide Exh.37. The plaintiff led his evidence as PW No.1 vide Exh.41 and examined the witnesses Subhash Pisal as PW No.2 vide Exh.52, Tulasidas Babasaheb Pisal as PW No.3 vide Exh.54 and Appasaheb Dagadu Pisal as PW No.4 vide Exh.58. The plaintiff closed evidence by filing pursis vide Exh.60.

Besides the oral evidence, the plaintiff relied upon 8A holding extract and 7/12 extracts vide Exh.7 to 9, notice copy vide Exh.43 and 44, writing i.e. memorandum of partition vide Exh.59.

5. The defendant led evidence vide Exh.62. The defendant also examined witnesses Babasaheb Ramchandra Pisal as DW No.2 vide Exh.65, Pravin Gulabrao Ghadge as DW No.3 vide Exh.67 and closed oral evidence by filing pursis vide Exh.68.

6. Upon hearing both the parties, the Ld. Trial Court held that there was no obstruction to the plaintiff for fetching water from the common wells, however, the Ld. Trial Court decreed the suit and fixed the time-table for fetching water from the said wells by judgment and decree dated 06.06.2023.

7. Aggrieved by the impugned judgment and decree, the appellant-original defendant has preferred this appeal on the

grounds that, the Ld. Trial Court has recorded the finding on issue No.1 in the negative (there is no obstruction from the defendant), so there is no question of determining the turn/days for fetching water by the plaintiff and defendant from the suit wells.

8. The plaintiff also filed cross-objections vide Exh.11 on the grounds that the finding recorded by the Ld. Trial Court on issue No.1 is against the provisions of the law and inconsistent. So, urged to allow the appeal and set aside the finding on issue No.1 and the appellant i.e. the original defendant urged to set aside finding on issue No.2 and dismiss the suit.

9. Heard the Ld. Advocates appearing for both the sides at some length. Gone through the pleading of both the parties, oral and documentary evidence on record and the judgment and decree of the Ld. Trial Court. The following points arise for determination. This Court record its findings on the points for the reasons that follow.

Sr.No	POINTS	FINDINGS.
1.	Is plaintiff entitled for the decree of determining the turn/rotation to fetch the water from the suit wells ?	In the Affirmative.

2.	Whether interference is required in the impugned judgment and decree under appeal ?	Yes.
3.	What order and decree ?	As per final order.

REASONS

As to Point Nos. 1:-

Admitted facts:

10. The relationship between the plaintiff and defendant as real brothers, the field Gat No.335 and 352 situated at Vyajwadi, Taluka Wai are the ancestral properties of both the brothers, there was partial partition between both the brothers about agriculture lands in the year 1976 and the family arrangement dated 04.11.2000 about remaining properties with the arrangement of common use of the well and the well water in the field Gat No.335 and 352 is not in dispute. From these admitted facts, the short question for determination is that, is the plaintiff entitled for fixation of turn/rotation to fetch the water from suit wells ?

11. The plaintiff has deposed vide Exh.41 and he has stated that he and the defendant are taking water by rotation from the suit wells, however, the defendant is causing obstruction by withdrawing the fuse etc., which resulting into inconvenience to the plaintiff to water his crops in time. According to the defendant, the plaintiff has raised the issue of

rotation of fetching water from the suit wells. He has taken that matter up to Litigation Free Village Committee and before the police. The plaintiff has caused obstruction to the defendant for laying independent pipeline. Further, the plaintiff is trying to create third party interest in the suit wells.

12. The plaintiff has urged for determination of turn/rotation to fetch the water from suit wells. Though the defendant has disputed the claim of the plaintiff but the defendant in his examination-in-chief itself stated that he and the plaintiff enjoying the wells and well water in the suit properties by their turn and the plaintiff is causing obstruction to him. The defendant has also stated that the plaintiff has not paid the common charges i.e. of installing the motor pump-sets. However, there is no counter claim of the defendant for recovery of common expenses. The defendant has admitted in his cross-examination that both the suit wells, motor pipeline, sprinkler is common between him and the plaintiff and since last two years, they were fetching water from the suit wells as per their necessity. Further, the defendant has admitted that no turn about fetching water from the suit wells was fixed between the plaintiff and defendant. The defendant's witness No.2 Babasaheb Pisal has also admitted in last two sentences of his cross-examination that there is dispute between the plaintiff and defendant about turn to fetch the water from the suit wells and

though the said matter was taken before litigation free village committee, but it was not resolved.

13. From the oral evidence led by both the parties, it is clear that both the suit wells are common between the plaintiff and defendant with equal shares and no turn of fetching water from the suit wells has been fixed between the parties.

14. During the course of arguments, the Ld. Advocate for the defendant raised issue that the well in Gat No.661 is also common well. However, the Ld. Advocate for the plaintiff disputed the said fact. The plaintiff has produced on record the document of partition which shows that the well in Gat No.661 was exclusively given to the plaintiff's share in the arrangement made on 04.11.2000. Further, this fact is also admitted by the defendant's witness.

15. The recitals in the document, clearly shows that the wells in Gat No.335 and 352 are kept common between plaintiff and defendant. The electric motors, pipelines, sprinkler, mango trees and bamboo clump on that well is kept common.

From this evidence on record and from the admitted facts from both parties by way of pleading as well as evidence, it is proved that the suit wells are common between the plaintiff and defendant and there is dispute between the plaintiff and

defendant on the ground of turn / rotation to fetch water from suit wells. In such circumstances, the plaintiff is entitled for the decree of determination of turn / rotation to fetch the water from the suit wells. Hence, this Court answer point No.1 in the affirmative.

As to Point no.2:

16. The Ld. Trial Court considered the pleading and other material on record, however, recorded the inconsistent findings on issue Nos. 1 and 2. The issues and findings on them recorded by the Ld. Trial Court is reproduced below:

Sr. No	ISSUES	FINDINGS.
1.	Whether plaintiff proves that defendant is causing obstruction to the right to take water from the suit wells ?	No.
2.	Is the plaintiff entitled to declaration of time-table to take water from the suit wells ? If yes, what would be the equitable arrangement ?	Yes.
3.	What order and decree ?	Suit is decreed.

17. The findings recorded by the Ld. Trial Court on Issue Nos. 1 and 2 are inconsistent. In such circumstances, interference is required in the impugned judgment and decree

passed by the Ld. Trial Court.

18. While considering the equitable and suitable turn to both the parties to fetch the water from suit wells, the factual aspect that the parties have dwelling houses in the field Gat No.335. So, the water in the suit wells is required by both the parties to satisfy their domestic water requirements. Further, both the parties have agriculture land in Gat Nos. 335 as well as 352 and both the properties are at some distance from each other. In such circumstances, it would be proper to give right to fetch water by the plaintiff and defendant from both the wells alternatively.

19. So far as suitable turn is concerned, the Ld. Trial Court determined the turn of 2-2 days for each brother alternatively and one day was ordered to be kept common. The parties are not satisfied on said arrangement. There are 7 days in a week, so it is difficult to divide 1 week with equal proportion to both the parties. In such circumstances, the arrangement of rotation of 1 week alternatively to each brother from each well will be equitable and proper to adjudicate the dispute between the parties. In such circumstances, this Court answer point No.2 accordingly and proceed to pass the following order.

ORDER

1. The appeal is hereby allowed.
2. The judgment and decree dated 06.06.2023 in Reg.C.S. No.84/2019 passed by the Ld. Civil Judge, (J.D.) Wai is hereby set aside.
3. The plaintiff and defendant have to fetch water by turn of 1 week alternatively on each well as follows:
 - 1.. Week will start on Monday and will end at 6.00 p.m. of Sunday.
 - 2.. The plaintiff has to fetch water for first week on well in Gat No.335 and for the same week, the defendant has to fetch water from the well in Gat No.352.
 - 3.. In the second week the plaintiff has to fetch the water from the well in Gat No.352 and defendant will fetch water from the well in Gat No.335 and so on....
 - 4.. Both the parties have to pay electric bills and other costs i.e. repairing etc. of electric motor, pump-sets etc. as per their $\frac{1}{2}$ share each.
 - 5.. Both the parties have to do the repairing work etc., immediately within two days by making the payment of their $\frac{1}{2}$ share.
 - 6.. No additional day would be granted for any party due to issue of electric supply or any repairing work.

- 7.. If any party avoided to discharge his obligation under contract of electricity motor within two days from its damage, then he will lose the said period from his turn.

4. Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

Wai
Date-07.03.2026

(D.B.Mane)
District Judge-2, Wai.

CERTIFICATE

“ I certify that this Judgment uploaded is a true and correct copy of original signed Judgment”

Judgment dictated on : 07.03.2026

Judgment checked 10.03.2026
and signed on :

Uploaded by : J.R.Bartakke Stenographer (Grade-I)

Uploaded on : 10.03.2026