

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 8838 OF 2014

Madhav s/o Ganpati Marewar .. Petitioner

vs

Gangadhar s/o Vankati Peddawar .. Respondent

Mr. Chandrakant R. Thorat, Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.
DATE : 2nd August, 2016

ORDER :

1. In spite of service, respondent is not before this court.
2. Heard learned counsel for petitioner.
3. Petition has been moved against order passed by Civil Judge, Senior Division, Udgir, rejecting Exhibit-42 filed by present petitioner seeking appointment of expert commissioner for enquiry into *mesne* profit in Miscellaneous Application No. 210 of 2010 which he has filed for initiation of enquiry into *mesne* profit in respect of plot no. 9 situated at Udgir as described in paragraph no. 1 of said miscellaneous application, as a consequence of decree granted in his favour.
4. Petitioner appears to have already adduced evidence in respect of aforesaid miscellaneous application through three witnesses. Now, he further wants to adduce evidence by appointing expert

commissioner. The court while rejecting application Exhibit-42 has considered that petitioner-applicant himself and his witnesses have already led evidence in respect of his claim and particularly he has mentioned in the application about the actual income with figures and when most of the part of the evidence is over.

5. Learned counsel submits while Order XVI, rule 9 of the Code of Civil Procedure, 1908 makes a way for appointment of such commissioner, the court ought to have given due regard to the application moved by petitioner and as such, according him, the court committed grave error in rejecting the request of the petitioner.

6. It appears that the petitioner has already adduced evidence of himself and three more witnesses in respect of the purport underlying the application. Even application Exhibit – 42 is vague and sans reasons leading to purpose underlying the application. The order as has been passed by the court does not appear to be way aside the requisite considerations which would be required to be corrected in the discretionary powers of this court.

7. Writ petition, as such, is not being entertained and is rejected.

SUNIL P. DESHMUKH,
JUDGE

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