

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

904 WRIT PETITION NO. 9502 OF 2016

SHRAWAN FAKIRA HARIYAL
VERSUS
KANTABAI CHANDRAKANT HARIYAL AND OTHERS

...
Advocate for Petitioner : Kakde Yuvraj V.
AGP for Respondent/State : S.R. Yadav
...

CORAM : T.V. NALAWADE, J.
DATED : 5th October, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Senior Division, Ahmednagar on Exhs. 79 and 82 in Regular Civil Suit No. 625/2012. Heard the learned counsel for petitioner.

2. The suit is filed by the petitioner for relief of declaration that he is owner of the suit property and he has got the suit property under a will. The issues show that the burden is cast on the plaintiff in respect of main four issues and there is burden on defendant only to prove that the suit is barred by the principle of res-judicata. In view of these circumstances, defendant has not stepped in to witness box to give evidence. When defendant does not want to lead any defence evidence, the plaintiff has filed aforesaid application for calling the

defendant as witness and for giving permission to him to cross examine the defendant. Defendant cannot be compelled to give evidence in view of these circumstances. It is open to the plaintiff to argue for adverse inference, if there are some circumstances which the defendant does not want to bring on the record. Writ Petition is dismissed.

[T.V. NALAWADE, J.]

ssc/