

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2239 OF 2014

Deepak Venkatrao Kulkarni
Age 50 years, Occu. Architecture & Builder,
R/o Varad, Sarang Society,
Garkheda Parisar, Aurangabad .. Petitioner

Versus

- 1] Suhas Jambukumar Jain
Age : Major, Occu. Business
Deals in Properties,
R/o 8, 'Keshardeep',
New Osmanpura, Aurangabad
- 2] Deepa W/o Suhas Jain
Age : Major, Occu. Household,
R/o 8, 'Keshardeep',
New Osmanpura, Aurangabad .. Respondents

...
Mr. R.M. Joshi, Advocate for Petitioner
Mr. P.F. Patni, Advocate for Respondents
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 12-12-2017

ORAL ORDER :

1. Heard learned counsel for the parties.
2. Application Exhibit-40 in special civil suit no. 286 of 2009 had been moved by plaintiff seeking expert's opinion on second occasion since while his earlier application had been granted and the opinion had come back with the expert expressing that "no any

definitive opinion is being expressed on them regarding their ownership". This opinion has been appearing for the reasons which have been given in the very said opinion.

3. According to learned counsel for petitioner Mr. Joshi, an expert is supposed to give definitive opinion when a matter has been referred to, however, since the opinion expressed that no definitive opinion can be expressed, it would be necessary to send the matter for a definitive expert's opinion and, as such, the application has been moved. The same had been rejected solely, relying on a decision of this court in the case of *Shivaji Vishnu Kshirsagar & Ors. Vs. Sayaji Vithal Kshirsagar and anr.* reported in 2012(1) ALL MR 320. He submits that it was not proper to give treatment, as had been given in the decision to Exhibit-40, since in the cited case, it was third occasion, an application has been moved for expert's opinion.

4. Learned counsel for respondents Mr. Patni submits that this may not be proper to consider that the opinion received back to the court from the expert, is not a definitive opinion. As a matter of fact, the reasons as appearing in the opinion, he has expressed that a definitive expression of opinion is difficult to be given. He submits that there would be infinite successive applications till the plaintiff receives back the definitive opinion as desired by him. As such, the impugned order can seldom be faulted with.

5. After having heard learned counsel for the parties as aforesaid, looking at the stage the application has been moved, which is interlocutory in nature, and having regard to section 105 of code of civil procedure, if the plaintiff is dissatisfied and aggrieved by the impugned order, it would be expedient that in case of appeal, a party may take recourse to section 105 of code of civil procedure. At this stage, I am disinclined to meddle with the order passed.

6. Writ petition, as such, is not being entertained and is rejected with the aforesaid observations.

[SUNIL P. DESHMUKH]
JUDGE

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