

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

**919 WRIT PETITION NO.3702 OF 2022**

**RANCHODDAS NARSIDAS BASHA DIED THROUGH LRS RAJENDRA  
RANCHODDAS BASHA  
VERSUS  
ISHWARDAS NARSIDAS BASHA DIED THROUGH LRS DEEPAK  
ISHWARDAS BASHA AND OTHERS**

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Advocate for Petitioner : Mr.Kulkarni Dattatray K. and Ms. Shweta D.  
Kulkarni

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**CORAM : NITIN. B. SURYAWANSHI, J.**

**DATE : 25<sup>th</sup> MARCH, 2022.**

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**PER COURT :**

1. The petitioner is aggrieved by the rejection of his applications (Exh. 295 and 297) in MARJI No. 243 of 1985 by the learned Civil Judge, Senior Division, Aurangabad. By the application (Exh. 295) the petitioner prayed for determination of mesne profit by appointing an Executive Engineer, (PWD), Aurangabad as a Commissioner, with a direction to him to hold an inquiry in respect of rental value of the property in dispute, since 1979 to 2019 and submit his report to the Court.

2. This application is resisted by the legal representatives of the Judgment Debtor. The Court has rejected the application holding

that the burden is on the Decree Holder to show that the statements filed on record by the Judgment Debtors are not genuine and authenticated. The issue for consideration before the Court is as to what was the actual rent received by defendant No. 1, during the said period. For determining the rent, the Court was of the view that even if the Court Commissioner is appointed and the report, if any, is filed by him would not be helpful to decide the issue regarding the actual amount of rent received by defendant No. 1. So, no purpose would be served by appointing the Court Commissioner and by bringing on record the rent prevailing during the said period. If the Commissioner is appointed the matter will be prolonged. The matter is more than 30 years old and the Decree Holder can lead evidence as regards the decretal amount receivable by them.

3. By filing application (Exh. 297) the petitioner requested the Court to direct the legal representatives of the Judgment Debtor No. 1 to lead evidence first on the point of mesne profit, which they have received out of the use of the disputed properties from the date of suit till the date. This application is also resisted by the respondents and is rejected by the Court holding that, the applications filed by the Decree Holder for withdrawal of amount have been rejected by various orders passed by the predecessor of the Court. When the proceeding is filed by the Decree Holder to

determine the mesne profit, the burden to prove the wrongful gain of profit received by the Judgment Debtor from the properties, lies upon the Decree Holders. The Court was, therefore, of the view that considering the documents filed on record, the Judgment Debtor cannot be directed to lead evidence first in the proceeding and therefore rejected the application.

4. After hearing the rival submissions of the learned Advocates for the respective parties, I am of the considered view that the Court has rightly rejected both the applications by giving cogent reasons. No illegality or perversity is found in the orders impugned in the present petition. No case is made out to exercise extra ordinary writ jurisdiction. Therefore, the Writ Petition is dismissed. No costs.

**( NITIN B. SURYAWANSHI )**  
**JUDGE**

mahajansb/