

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.51/2016

Sabirkhan Shabbirkhan Pathan.

...Petitioner..

Versus

Jabirkhan Shabbirkhan Pathan.

...Respondent...

.....

Shri B.R. Waramaa, Advocate for petitioner.

Shri S.B. Yawalkar, Advocate for respondent.

.....

CORAM: T.V. NALWADE, J.

DATE: 14.09.2016

ORDER :

1] The petition is filed by original defendant in Regular Civil Suit No.64/2014, which is pending in the Court of Civil Judge, Junior Division, Jamner Dist.Jalgaon. The application at Exhibit 20 was filed for appointment of Court Commissioner by the defendant and the said application is rejected.

2] Both the sides are heard.

3] The suit is filed by present respondent for relief

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of possession of Plot No.31. It is the case of defendant that Plot Nos.30 and 31 are adjacent to each other and the defendant and his brother have made construction of a building on both these plots and that building is standing on both the plots. By report of Court Commissioner, the defendant wants to bring on record that the building is constructed on Plot Nos.30 and 31.

4] Copy of plaint is on record and it shows that the plaintiff has prayed for relief of possession of Plot No.31 on the basis of title and he has claimed possession of both open space and the construction, if any, appearing on Plot No.31. It is upto the plaintiff to prove the title. If the defendant has made some construction on Plot No.31 and the plaintiff proves that the Plot No.31 belongs to him, then it will be open to the civil Court to decide the rights of both the sides with regard to construction. When the plaintiff himself has come to the Court with a case that there is construction of building on Plot No.31, there is no need for appointment of Court Commissioner. The suit is simply for possession of Plot No.31, the entire portion on the basis of title, and for that, in view of the

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aforesaid circumstances, there is no need for appointment of Court Commissioner.

5] In the result, the petition stands disposed of as dismissed.

(T.V. NALAWADE, J.)