

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No.5721 OF 2018

Bhanuben Haribhai Tandel

... Petitioner

Vs.

Diwaliben Ukadbhai Tandel & Ors.

... Respondents

Mr.Swapnil R. Patil for the Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 9, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This petition is directed against the order dated 25.1.2018 passed by the learned Civil Judge Senior Division, Daman, below Exhibit 140 in Special Civil Suit No.28 of 2010. The plaintiff has filed the suit for declaration in respect of the sale deed dated 20.3.1997 executed by the defendants, that it is bogus and illegal. In the said Suit, defendant No.3 has prayed for issuance of witness summons to Daman Municipal Council to produce the record and proceedings giving permission to plaintiff to construct buildings on

the suit land. Three buildings are already constructed by the plaintiff.

3. The trial Court has taken a correct view that the relief prayed and the issue arose in the suit is different and defendant No.3 is unnecessarily trying to make out a different case of illegal construction by praying for issuance of summons.

4. The view taken by the trial Court is correct. Illegal construction, even though is carried out by the plaintiffs, is altogether a different issue than the relief claimed by him. The impugned order is, therefore, sustained. Writ Petition is accordingly dismissed in *limine*.

(MRIDULA BHATKAR, J.)