

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11078 OF 2017

Ashok Ramchandra Dingane

...Petitioner

Versus

Vijay Shankar Ranbhare & ors.

...Respondents

Mr. Milind Deshmukh, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 21st JUNE, 2019

PC:-

1. Heard Mr. Deshmukh, the learned Counsel for the Petitioner.

2. The challenge in this petition is to an order passed by the learned 2nd Joint Civil Judge, Junior Division, Karad, on 28th June, 2016, on an application for appointment of an Architect or Civil Engineer as a Court Commissioner to carry out local inspection and submit a report to the Court. The learned Civil Judge was persuaded to reject the application on the premise that the land was already got measured by appointing Taluka Inspector Land Records, Karad, as the Court Commissioner. The report of the Taluka Inspector of Land Records has already been received. In the

absence of challenge to the proceedings of the Commission or the findings recorded by the Court Commissioner, it may not be justifiable to again appoint a Court Commissioner.

3. The learned Counsel for the Petitioner would urge that the appointment of an expert Civil Engineer or an Architect was sought to demonstrate that the defendant has carried out illegal construction in breach of the governing rules and norms and the said question could not have been examined by Taluka Inspector of Land Records.

4. The issue as to whether Defendant no.1 has carried out illegal construction, beyond the permissible Floor Space Index, needs to be established by the Petitioner – Plaintiff by leading cogent evidence. Whether the disputed structure has been erected in breach of development control rules or norms is a matter for evidence. In this backdrop, once the disputed land has been measured, the learned Civil Judge was justified in rejecting the request of the Petitioner for appointment of another Court Commissioner. The petition, therefore, does not deserve to be entertained.

5. The dismissal of the petition, however, would not preclude the Petitioner from leading evidence before the

learned Civil Judge to demonstrate that the construction has been carried out by Defendant no.1 in breach of the governing development control rules and norms or the same is otherwise illegal or unauthorised.

6. With the aforesaid observations, the petition stands dismissed.

[N. J. JAMADAR, J.]