

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11210 of 2024**

Gunendra Shahupal Sangaj and Anr.

....Petitioners

V/s.

Malati Anandrao Chavan

....Respondent

Mr. Harvinder Kaur Rogi with Ms Sanramsinh Yadav for the Petitioners.

Mr. Ishaan Kapse with Mr. Shubham Shinde for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 August 2024.

P.C. :

1) The Petitioners have challenged order dated 18 June 2024 passed by the learned 3rd Joint Civil Judge, Senior Division, Kolhapur, rejecting application filed by Petitioner-Plaintiff for appointment of Court Commissioner for conducting inspection of the suit premises with reference to the allegation of unauthorised additions and alterations made therein. The Trial Court has proceeded to reject the application holding that the Court Commissioner cannot be appointed for the purpose of inspection of the structure, which has not been described in the plaint.

2) I have found these observations made by the learned Trial Court to be totally erroneous in view of the specific pleadings in paragraph 7 of the plaint, which are virtually admitted in paragraph 10 of the written statement. The Defendant has admitted in the written statement that he has removed various parts of the old construction and has replaced the

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same by new material. It is Plaintiff's case that such construction is carried out without their written permission.

3) In my view therefore, inspection of the suit premises would assist the Court in deciding the Suit. The Trial Court has erroneously rejected the application for appointment of Court Commissioner. The order dated 18 June 2024 is accordingly, set aside. The application filed by the Plaintiffs at Exhibit-81 stands allowed in terms of prayers made therein. The Trial Court shall pass a formal order nominating the structural engineer for the purpose of carrying out inspection of the suit premises.

4) With the above directions, the Writ Petition is partly allowed and disposed of.

[SANDEEP V. MARNE, J.]