

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

WRIT PETITION NO.2526 OF 2014

Bhalchandra Kashinath Shinde and anr. : Petitioners
versus
Hirakant Laxmanrao Shinde : Respondent.

Mr. S M Kamble for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 26th August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 1/1/2014 passed by the learned District Judge-1 Niphad by which order the Misc. Civil Appeal No.47 of 2012 filed by the Petitioners challenging the order dated 3/10/2012 passed by the Trial Court allowing the application (Exhibit 5) filed by the Plaintiff and rejecting the application (Exhibit 23) filed by the Petitioners original Defendants came to be dismissed. There is therefore a concurrent finding recorded by the Courts below in respect of the entitlement of the Plaintiff to the discretionary relief of temporary injunction and dis-entitlement of the Defendants to the said relief. Both the Courts below on the basis of the material on record and especially the entries in the crop cultivation column have come to the conclusion that it is the Plaintiff who is in possession and the Defendants are not. The Courts below have also referred to the evidence of one Yuvraj Shinde (Bodhare) who is the brother of the Defendant No.1 i.e. the Petitioner No.1 herein wherein he has stated that he used to

cultivate the suit property on behalf of the Plaintiff. Having regard to the said affidavit filed by the said Yuvraj Shinde the Courts below have refused to give credence to the affidavits filed on behalf of the Defendants of the adjoining land owners. In so far as the balance of convenience and irreparable loss is concerned, the Courts below have held that the said factor tilts in favour of the Plaintiff as ultimately if the Defendants succeed then they can apply for grant of mesne profits. In the light of the concurrent orders passed by the Courts below, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]