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

WRIT PETITION NO. 3255 OF 2016

Suryakant Sayajirao Thorat & Ors.

...Petitioners

vs

Hanmant Babasaheb Patil & Ors.

...Respondents

.....

Mr D.V.Sutar for the Petitioners

Mr Bhushan Walimbe for Respondent Nos.1 to 4.

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CORAM : N.M.JAMDAR, J.

21 SEPTEMBER, 2016

P.C. :

The Petitioners challenge the orders passed by the Civil Judge, Islampur and District Judge, Islampur granting injunction in favour of the Respondents / Plaintiffs. Heard learned counsel for parties. Learned counsel for the Petitioner submitted that if it is the case of the Respondent / Plaintiff that in the earlier suit, an order of injunction has been obtained then appropriate remedy is to execute the decree and not to file another suit. He submitted that there is no positive finding rendered by both the Courts to hold that the Respondents/Plaintiffs are in possession. This submission cannot be accepted as it has been pointed out by the learned advocate for the Respondents that the suit was filed by the Respondents/ Plaintiffs against the father of the Petitioners and

since the Petitioners were not obeying the order of the injunction the present suit was filed. The Courts have rendered *prima facie* finding that the predecessors of the Petitioners were shown to be in possession since the year 1965-66. Thereafter, the Respondents / Plaintiffs have acquired title to the property and the revenue records are in favour of the Respondents / Plaintiffs. Both the Courts have rightly held that merely on the basis of certain crop receipts, finding in favour of the Petitioners / Defendants, cannot be rendered. The case put up by the Petitioners/ Defendants is of adverse possession which will have to be proved by the Petitioners at the trial. Clarifying that the observations made in the impugned orders are *prima facie*, the Writ Petition is disposed of.

(N.M.JAMDAR J.)