

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

WRIT PETITION NO.5578 OF 2015

Shyam Rau Kadam & Anr.

..... Petitioners

Versus

Rajaram Banu Kadam

.....Respondent

....

Mr. Santosh Suryawanshi for the petitioners.

Mr. Anand Patil for the respondent.

...

CORAM : N. M. Jamdar J.

Tuesday 23 AUGUST, 2016

P. C.

. The petitioners challenge order passed by the learned Civil Judge, Junior Division Shirala and the District Judge Islampur whereby the application taken out by the respondent/plaintiff for grant of temporary injunction was allowed and the application taken out by the petitioners under Exh. 31 was rejected. By the impugned orders, both the Courts have restrained the petitioners from interfering with the possession of the respondent/plaintiff in the suit property.

2. Heard the learned counsel for the parties.

3. Both the courts have taken note of various sale deeds as well as the fact that the petitioners had earlier instituted a suit on the ground claiming that he is in possession and had taken out an

application for temporary injunction which was rejected. The learned counsel for the petitioners sought to contend that the appeal against the refusal to grant temporary injunction in the suit filed by the petitioners is pending.

4. The courts have not considered the material on record in proper percept.

5. Both the courts have found prima facie case in favour of the respondent / plaintiff. It is not possible to appreciate the evidence, in this writ petition. The petitioners sought for injunction on the ground that they are in possession and at present the application of the petitioners stands negatived. Therefore, there is no fundamental error in the impugned order issued so as to warrant inference under Article 227 of the Constitution of India.

6. The writ petition is rejected. The suit will be decided on its own merits.

(N. M. Jamdar, J.)