

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 08762 of 2017

District : Aurangabad

1. Mahendra s/o. Kalyanrao Waghchoure,
Age : 33 years,
Occupation : Agriculture,
R/o. Dhupkheda,
Taluka Paithan, Dist. Aurangabad.
 2. Indubai w/o. Kalyanrao Waghchoure,
Age : 68 years,
Occupation : Agriculture,
R/o. Dhupkheda,
Taluka Paithan,
District Aurangabad.
- .. Petitioners
(Original defendants
no.01 & 02)

versus

1. Manik s/o. Keshavrao Waghchoure,
Age : 54 years,
Occupation : Agriculture,
R/o. Dhupkheda,
Taluka Paithan, Dist. Aurangabad.
 2. Mohan s/o. Vinayak Gatkai,
Age : 68 years,
Occupation : Agriculture,
R/o. 74, Jalgaon,
Taluka Paithan, Dist. Aurangabad.
- .. Respondents
(No.01 - Original
plaintiff)

.....

Mr. R.V. Gore, Advocate, for petitioners.

.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 17TH JULY 2017

ORAL JUDGMENT :

Heard learned counsel for the petitioners.

02. Two courts hitherto have concurrently considered plaintiff to be *prima facie* in possession having regard to sale deed executed in 1988 by father of plaintiff and on the basis of same, it appears since 1994-95 continuously the defendant's name is shown in the cultivation column. The appellate court has observed that so far as temporary injunction is concerned, title at the stage of interim injunction may not have much significance as would be possession. Both the courts have considered at the interim stage documents lend substance to plaintiff's claim of possession and appears to have discharged his burden of *prima facie* case about him being in possession. The reasons given by the trial as well as appellate court do not appear to be away from record or can be said to be not in consonance with the material. Both the courts have arrived at *prima facie* concurrent findings about possession of defendant. This is not a case wherein it can be said that findings on *prima facie* case, balance of convenience and irreparable loss are unsustainable.

03. The writ petition is not being entertained and as such, same is dismissed. Observations hitherto of all courts including this court are at interlocutory stage and shall not influence decision on merits in the suit.

(Sunil P. Deshmukh)
JUDGE

.....