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

**WRIT PETITION NO. 8021 OF 2017**

|                            |     |             |
|----------------------------|-----|-------------|
| Devidas R Kulkarni and ors | ... | Petitioners |
| V/s.                       |     |             |
| Chhaya Wagh and ors        | ... | Respondents |

Mr. Ajinkya J. Jaibhave, for the Petitioners  
Mr. Ditendra Kumar Mishra, for the  
Respondents.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 14<sup>th</sup> DECEMBER, 2017.**

**P.C. :**

1] Heard learned counsel for the petitioners and respondents.

2] By this petition, the petitioners are challenging the order dated 30.9.2016, passed by the District Judge 4, Nashik, in Misc. Appeal No.58 of 2015. The said appeal was preferred by the petitioner challenging the order dated 27<sup>th</sup> February, 2015, passed below Exh.5, by the Civil Judge J.D. Sinnar, District. Nashik, in R.C.S.No.234 of 2013 thereby rejecting petitioners' application for interim injunction and the said order is confirmed by the Appellate Court by dismissing the Misc. Civil Appeal filed by the petitioners.

3] Being aggrieved, the petitioners have approached this Court. According to petitioners, they have purchased the said land from one Prakash Wagh and thereafter the names of the petitioners came to be entered in the column of possession and ownership of 7x12 extract. However, as respondents started causing obstruction in their possession, the petitioners were constrained to approach the trial Court for relief of interim injunction in a suit filed for simpliciter injunction.

4] However, perusal of the order passed by the trial Court which is also confirmed by the Appellate Court, clearly goes to show that prima facie, the petitioners have failed to prove their actual possession and cultivation over the suit lands. Both the Courts have also considered respective affidavits filed by both the parties. As regards affidavits filed by the petitioners' two witnesses, the trial Court and appellate Court has considered that it is not shown that those witnesses are the adjacent neighbours or occupiers and hence much reliance cannot be placed on those affidavits.

5] As against it the affidavits filed by respondents' witnesses who had produced 7x12 extracts of their own lands to show that their land is situate adjacent to the suit land. Both the Courts have also considered the fact that names of respondents are appearing in 7x12 extract in cultivation column and in view thereof, both the Courts

have held that the petitioners have failed to prove their possession over the suit land on the date of filing of the suit.

6] In such situation as both the Courts have properly considered whatever material was placed on record and thereafter rejected petitioners' application, this Court within the limited scope of writ jurisdiction, cannot enter into factual aspects especially when the order passed by the Appellate Court confirming the order of the trial Court is found to be passed on the basis of material on record. The writ petition holds no merit, therefore, stands dismissed.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**