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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1010 OF 2018**

Sonu Suresh Lokchandani & Anr. ..Petitioners.  
V/s.  
Prabhakar Namdevrao Gaikwad & Anr. ..Respondents.

Mr.Sanjiv Sawant I/b.VMK Legal for the petitioners.

Mr.Ganesh S.Bhat for respondent No.1

**CORAM : M.S.SONAK, J.**

**DATE : APRIL 12, 2019**

**P.C.:-**

Heard Mr.Sawant, learned counsel for the petitioners and  
Mr.Bhat, learned counsel for respondent No.1.

2. Challenge in the petition is to the order dated August 30,  
2017, the operative part of which reads thus:-

*“Read application and say. Heard both sides. Perused record and citation filed by the parties. Plaintiff has filed this suit for permanent injunction against defendant. According to the contents of said application parties must show the contents by adducing proper evidence. Hence in my view the said preliminary issues are regarding the pleadings of parties and there is mixed question of*

*facts and law. Hence said issues be decided along with other issues of said matter. Therefore, said application is filed. ”*

3. Mr.Sawant, learned counsel for the petitioners submits that in terms of the sale deed, on the basis of which the petitioners claims title, it is clear that it is the petitioners who are in possession of the suit property. He, therefore, submits that in such a situation, a suit seeking permanent injunction simplicitor under the provisions of sections 41h, 31, 38 of the Specific Relief Act is required to be granted. He, therefore, submits that the impugned order is vulnerable and deserves to be set aside.

4. The position that the petitioners are in possession of the suit property is seriously disputed. In fact, the Appeal Court has vacated the injunction granted in favour of the petitioners in relation to the petitioners' alleged claim as regards to possession. At the highest, the issue of possession is a disputed question of fact. The issue which the petitioners proposes, therefore, involves a mixed question of law and fact.

5. The impugned order records precisely the aforesaid position. There is no infirmity in the impugned order. Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

6. Incidentally, the petitioners had an alternate remedy to institute a civil revision application against this order. However, since there is no merit in the challenge to the impugned order, this petition came to be entertained and is hereby dismissed.

7. However, it is made clear that the issue as regards possession and thereafter, whether any relief should be granted to the petitioner under the Specific Relief Act or not are the issues which have to be framed and decided upon at the trial of the suit. Therefore, all contentions of the parties in his regard are technically left open.

9. All concerned to act on the basis of an authenticated copy of this order.

*(M.S.SONAK, J.)*