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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2240 OF 2016**

Shri Kasammiyan Aadam Varuse and Ors.

... Petitioners.

V/s

Shri Gunga Kisan Patil (Khabale)
and Others

... Respondents.

Mr. Pratap Patil for the Petitioners.

Ms. Manisha Jagtap @ Mayuresh Ingale i/b J. Shekhar & Co. for
Respondent Nos. 1 to 4 and 5A to 5F and 6 to 10.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 12, 2022

P.C.:-

1] This Petition is preferred by the Petitioners/Defendants to the suit being Regular Civil Suit No.29 of 2011 which is preferred by the Respondents/Plaintiffs for injunction, not to create third party interest and not to disturb their possession, questioning the order dated 19/01/2016 passed below Exhibits-147 and 148.

2] Contentions of Counsel for the Petitioners are, defence of the Petitioners/Defendants is based on acquisition of title and ownership pursuant to the provisions of B.T. & A.L. Act. He would urge that legality of the said defence cannot be permitted to be decided in the present suit, particularly having regard to the provisions of Section 85 of the B.T. & A.L. Act. As such, it is claimed that Court below

committed an error in granting witness summons.

3] Counsel for the Respondents/Plaintiffs would support the order impugned, as according to her, whether evidence to be led by witness who is summoned and appreciation of the same can be looked into by the Court at an appropriate stage.

4] Considered submissions.

5] By way of order impugned, witness summons is issued to the Bank Manager so as to prove the status of erstwhile owner as that of Government employee and the effect of the same on the merits of the claim in the suit in the backdrop of provisions of B.T. & A.L. Act. Whether witness summons should have been permitted and evidence of such witness is relevant or not can be looked into at the stage of final hearing of the suit. However, it cannot be said that Court below was in error in granting witness summons as primarily it appears that Court below was satisfied about sufficiency of the cause for issuance of witness summons.

6] In that view of the matter, no case for interference is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)