

Shabnoor

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

WRIT PETITION NO.8520 OF 2016

Babu Lala Gaikwad (Deceased)	
Ramchandra Babu Gaikwad (Deceased)	
Through Legal Heirs	... Petitioners
V/s.	
Indu Gajanan Gaikwad & Ors.	... Respondents

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Mr. Umesh R. Mankapure for petitioners.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 17, 2024

P.C.:

1. Challenge in this petition is to the rejection of an application filed by the petitioner during pendency of the appeal, and challenging dismissal of the suit instituted for redemption of mortgage. The suit was filed in the year 1997. The Trial Court framed an issue as to whether plaintiff is in possession of the suit property. The Trial Court, based on the material on record, recorded a finding that the petitioner is not in possession.

2. In an appeal challenging the decree, the petitioner filed an application for injunction restraining the defendants from disturbing the petitioner's possession over the suit property. The Appellate Court while rejecting the petitioner's application recorded a finding based on *prima facie* adjudication that the petitioner is not in possession; hence, rejection of such application need not be faulted in the writ petition.

However, contentions of the petitioner regarding he is being in possession shall be decided on merits in the appeal filed by the petitioner. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)